

EXHIBIT 4

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Friday, May 1, 2009

- - -

Oral deposition of PETER VAN
N. LOCKWOOD, ESQUIRE, taken pursuant to
notice, was held at the offices of CAPLIN
& DRYSDALE, One Thomas Circle N.W., Suite
1100, Washington, DC 20005, commencing
at 9:43 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -

MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

Page 2

Page 4

1 APPEARANCES:
2
3 DRINKER BIDDLE & REATH, LLP
BY: MICHAEL F. BROWN, ESQUIRE
4 JEFFREY M. BOERGER, ESQUIRE
One Logan Square
5 18th & Cherry Streets
Philadelphia, Pennsylvania 19103-6996
6 215.988.2988
(brownmf@db.com)
7 (jeffrey.boerger@db.com)
Representing OneBeacon America Insurance
8 Company, Seaton Insurance Company,
Government Employees Insurance Company,
9 Columbia Insurance Company f/k/a Republic
Insurance Company
10
11 CAPLIN & DRYSDALE, CHARTERED
BY: NATHAN D. FINCH, ESQUIRE
12 JEFFREY A. LIESEMER, ESQUIRE*
(*VIA TELECONFERENCE)
13 One Thomas Circle N.W.
14 Suite 1100
Washington, DC 20005
15 202.862.7801
(ndf@capdale.com)
16 (jal@capdale.com)
Representing Grace, Official Committee of
17 Asbestos Personal Injury Claimants
("ACC"), and Witness
18
19 W.R. GRACE & CO.
20 BY: RICHARD C. FINKE, ESQUIRE*
ASSISTANT GENERAL COUNSEL
21 (*VIA TELECONFERENCE)
5400 Broken Sound Boulevard, NW
22 Suite 300
Boca Raton, Florida 33487
23 561.362.1533
Representing W.R. Grace & Co.
!

1 APPEARANCES (continued)
2
3 SPEIGHTS & RUNYAN
BY: DANIEL H. SPEIGHTS, ESQUIRE*
4 (*VIA TELECONFERENCE)
200 Jackson Avenue East
5 P.O. Box 685
Hampton, South Carolina 29924
6 803.943.4444
(dspeights@speightsrunyan.com)
7 Representing Anderson Memorial Hospital
8
9 TUCKER ARENSBERG
BY: MICHAEL A. SHINER, ESQUIRE
10 1500 One PPG Place
Pittsburgh, Pennsylvania 15222
11 412.594.5586
(mshiner@tuckerlaw.com)
12 Representing Certain London Market
Insurers and AXA Belgium
13
14 MENDES & MOUNT, LLP
15 BY: CAROLINA ACEVEDO, ESQUIRE*
(*VIA TELECONFERENCE)
16 750 Seventh Avenue
New York, New York 10019
17 212.261.8262
(carolina.acevedo@mendes.com)
18 Representing AXA Belgium as Successor to
Royale Belge SSA
19
20 MENDES & MOUNT, LLP
21 BY: ALEXANDER MUELLER, ESQUIRE*
(*VIA TELECONFERENCE)
22 750 Seventh Avenue
New York, New York 10019-6829
23 212.261.8296
(alexander.mueller@mendes.com)
24 Representing London Market Companies

Page 3

Page 5

1 APPEARANCES (continued)
2
3 KIRKLAND & ELLIS, LLP
BY: BARBARA M. HARDING, ESQUIRE
4 THEODORE L. FREEDMAN, ESQUIRE
655 Fifteenth Street, N.W.
5 Washington, DC 20005-5793
202.879.5081
6 (barbara.harding@kirkland.com)
(tfreedman@kirkland.com)
7 Representing the Debtors
8
9 SIMPSON THACHER & BARTLETT, LLP
BY: ELISA ALCABES, ESQUIRE
10 425 Lexington Avenue
New York, New York 10017-3954
11 212.455.3133
(ealcabes@stblaw.com)
12 Representing Travelers Casualty and
Surety Company
13
14 VORYS, SATER, SEYMOUR AND PEASE, LLP
15 BY: TIFFANY STRELOW COBB, ESQUIRE*
ROBERT J. SIDMAN, ESQUIRE*
16 (*VIA TELECONFERENCE)
52 East Gay Street
17 Columbus, Ohio 43215
614.464.8322
18 (tscoobb@vorys.com)
Representing The Scotts Company, LLC
19
20 COHN WHITESELL & GOLDBERG, LLP
BY: DANIEL C. COHN, ESQUIRE
101 Arch Street
22 Boston, Massachusetts 02110
617.951.2505
23 (cohn@cwgl.com)
Representing the Libby Claimants
24

1 APPEARANCE (continued)
2
3 FORD MARRIN ESPOSITO & WITMEYER & GLESER
BY: ELIZABETH M. DeCRISTOFARO, ESQUIRE
4 Wall Street Plaza
New York, New York 10005-1875
5 212.269.4900
Representing Continental Casualty Company
6 and Continental Insurance Company
7
8 BILZIN SUMBERG BAENA PRICE & AXELROD, LLP
BY: MATTHEW I. KRAMER, ESQUIRE
9 200 South Biscayne Boulevard
Suite 2500
10 Miami, Florida 33131-5340
305.450.7246
11 (mkramer@bilzin.com)
Representing Property Damage Committee
12
13 STROOCK & STROOCK & LAVAN, LLP
14 BY: ARLENE G. KRIEGER, ESQUIRE
180 Maiden Lane
15 New York, New York 10038-4982
212.806.5400
16 (akrieger@stroock.com)
Representing Official Committee of
17 Unsecured Creditors
18
19 CROWELL & MORING, LLP
BY: MARK PLEVIN, ESQUIRE
20 NOAH S. BLOOMBERG, ESQUIRE
1001 Pennsylvania Avenue NW
21 Washington, DC 20004-2595
202.624.2913
22 (mplevin@crowell.com)
(nbloomberg@crowell.com)
23 Representing Fireman's Fund Insurance
(Surety Bond)
24

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Page 8

1 APPEARANCES (continued)
2
3 STEVENS & LEE, P.C.
BY: JOHN D. DEMMY, ESQUIRE
1105 North Market Street, 7th Floor
4 Wilmington, Delaware 19801
302.654.5180
5 (jdd@stevenslee.com)
Representing Fireman's Fund Insurance
6
7
8 ALAN B. RICH LAW OFFICES
BY: ALAN B. RICH, ESQUIRE
Elm Place, Suite 4620
9 1401 Elm Street
Dallas, Texas 75202
10 214.744.5100
(arich@alanrichlaw.com)
Representing Property Damage FCR
11
12
13 CONNOLLY BOVE LODGE & HUTZ, LLP
BY: JEFFREY C. WISLER, ESQUIRE
14 The Nemours Building
1007 North Orange Street
15 P.O. Box 2207
Wilmington, Delaware 19899
16 302.88.6528
(jwisler@cblh.com)
Representing Maryland Casualty
17
18
19 ECKERT SEAMANS CHERIN & MELLOTT, LLC
BY: EDWARD J. LONGOSZ, II, ESQUIRE
20 1747 Pennsylvania Avenue, NW
12th Floor
21 Washington, DC 20006
202.659.6619
22 (elongosz@eckertseamans.com)
Representing Maryland Casualty and Zurich
23
24

1 APPEARANCES (continued)
2
3 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER,
LLP
4 BY: CARL PERNICONE, ESQUIRE*
(*VIA TELECONFERENCE)
5 150 East 42nd Street
New York, New York 10017-5639
6 212.915.5656
(carl.pernicone@wilsonelser.com)
Representing Arrowood Indemnity Company
7
8
9 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
BY: KEVIN J. MANGAN, ESQUIRE*
10 (*VIA TELECONFERENCE)
222 Delaware Avenue
11 Suite 1501
Wilmington, Delaware 19801
12 302.252.4361
(kmangan@wcsr.com)
Representing State of Montana
13
14
15 PEPPER HAMILTON, LLP
BY: LINDA J. CASEY, ESQUIRE*
16 (*VIA TELECONFERENCE)
3000 Two Logan Square
17 Philadelphia, Pennsylvania 19103
215.981.4000
18 (caseyl@pepperlaw.com)
Representing BNSF Railway Company
19
20
21
22
23
24

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1 APPEARANCES (continued)
2
3 WILEY REIN, LLP
BY: KARALEE C. MORELL, ESQUIRE
1776 K Street NW
4 Washington, DC 20006
202.719.7520
5 (kmorell@wileyrein.com)
Representing Maryland Casualty and Zurich
6
7
8 COZEN O'CONNOR
BY: JACOB C. COHN, ESQUIRE
1900 Market Street
9 Philadelphia, Pennsylvania 19103-3508
215.665.2147
10 (jcohn@cozen.com)
Representing Federal Insurance Company
11
12
13 ORRICK HERRINGTON & SUTCLIFFE, LLP
BY: JONATHAN P. GUY, ESQUIRE
JOSHUA M. CUTLER, ESQUIRE
14 Columbia Center
1152 15th Street, N.W.
15 Washington, DC 20005-1706
202.339.8516
16 (jguy@orrick.com)
Representing Future Claimants
Representative
17
18
19 CUYLER BURK, P.C.
BY: ANDREW CRAIG, ESQUIRE
4 Century Drive
20 Parsippany, New Jersey 07054
973.734.3200
21 (acraig@cuyler.com)
Representing Allstate Insurance Company
22
23
24

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3 (It is hereby stipulated and
4 agreed by and among counsel for
5 the respective parties that the
6 filing, sealing and certification
7 of the deposition are waived; and
8 that all objections, except as to
9 the form of the question, will be
10 reserved until the time of trial.)
11
12 PETER VAN N. LOCKWOOD,
13 ESQUIRE, after having been first
14 duly sworn, was examined and
15 testified as follows:
16
17 EXAMINATION
18
19 (ACC 30(b)(6)-1 and 2
20 premarked for identification.)
21
22 BY MR. BROWN:
23 Q. Good morning, Mr. Lockwood.
24 A. Good morning, Mr. Brown.
25 Q. You are appearing here today

1 as the Rule 30(b)(6) designee for the
2 ACC, correct?
3 A. Correct.
4 Q. And that is with respect to
5 a number of 30(b)(6) notices, correct?
6 A. A very large number, yes.
7 Q. Can you look at the one
8 that's been put before you and marked ACC
9 Rule 30(b)(6)-1, which I will call ACC-1
10 here after.
11 A. I have it.
12 Q. Can you identify it?
13 A. It is an Amended Notice of
14 Deposition of Asbestos PI Committee
15 Pursuant to Rule 30(b)(6) served by four
16 insurance companies, One Beacon, Seaton,
17 Geico, and Columbia. And it contains an
18 attachment with definitions and topics
19 which are the subject matter of
20 testimony.
21 Q. Okay. And can you look at
22 the document that I put before you that's
23 marked ACC-2.
24 A. I have it.

Page 14

Page 16

1 Q. And identify that document,
2 please.

3 A. That document is the
4 Objections of the Official Committee of
5 Asbestos Personal Injury Claimants to
6 Rule 30(b)(6) Notices of Deposition
7 served by Certain Plan Objectors.

8 Q. Okay. And is it correct
9 that you are here today prepared to
10 testify about the topics that are listed
11 in ACC-1 subject to the objections that
12 appear in ACC-2?

13 A. The answer to that question
14 is yes, subject to the following caveats:
15 To the extent that the topics in this
16 notice or any of the other notices are
17 subjects that the ACC has a person with
18 knowledge on, I am here to testify about
19 it. To the extent that the ACC doesn't
20 have a person with knowledge on certain
21 topics, then I am here to testify that
22 the ACC doesn't have knowledge on those
23 topics.

24 Q. Okay. And --

1 Q. Have you ever seen this
2 document before?

3 A. Frankly, I am not sure.

4 Q. Okay.

5 A. I may have. I may not have.

6 Q. All right. Why don't you go
7 to the back of the document, starting
8 with page 9.

9 A. Page 9 or page 8?

10 Q. I am sorry. Page 8.

11 A. I am there.

12 Q. Can you identify that
13 document?

14 A. It appears to be a copy of a
15 Term Sheet for the Resolution of Asbestos
16 Personal Injury Claims entered into by a
17 variety of parties, including the ACC.

18 Q. Okay. Have you seen the
19 Term Sheet, either this Term Sheet or
20 some iteration of it previously?

21 A. I have seen the original of
22 it.

23 Q. Okay. Can you take a look
24 at what you have before you and tell me

Page 15

Page 17

1 A. And to the extent that
2 occurs, we will see how it occurs in the
3 course of the questions.

4 Q. Okay. And then you
5 mentioned ACC and a person with the ACC.

6 How are you using the term
7 "ACC"?

8 A. I am using it as the entity
9 that was appointed in the bankruptcy case
10 by the U.S. Trustee.

11 MR. BROWN: ACC-3.

12 (ACC 30(b)(6)-3 marked for
13 identification at this time.)

14 BY MR. BROWN:

15 Q. Okay. Mr. Lockwood, you now
16 have before you a document that should
17 have two exhibit labels on it. One is an
18 Exhibit-12 from the deposition of
19 Mr. Finke, and the other is ACC-3.

20 Could you identify the
21 document that has been marked as ACC-3?

22 A. It appears to be a Form 8-K
23 file by W.R. Grace & Company dated April
24 6, 2008.

1 whether it differs in any way from the
2 original?

3 MR. FINCH: Objection.

4 THE WITNESS: On the face of
5 it, it does not appear to
6 different. I mean, obviously, a
7 comparison of the original and
8 this copy would be the definitive
9 way of determining whether there
10 is a difference, but this looks to
11 be the same, as best I can recall.

12 BY MR. BROWN:

13 Q. Okay. And this document was
14 negotiated by the parties that executed
15 it, is that correct, or their counsel?

16 A. Broadly speaking, yes. I
17 mean, negotiated implies human beings in
18 a room or in some communication, and
19 these are all entities. So various
20 representatives of the entities that are
21 listed here in negotiated this document
22 on behalf of their respective principals.

23 Q. Is there anything in the
24 Term Sheet that you can see that's

Page 18

1 inaccurate?

2 MR. FINCH: Object to form.

3 THE WITNESS: To answer that
4 question, I would have to read
5 every word in the Term Sheet and
6 determine whether or not there are
7 statements in here which are
8 contained facts which might be
9 erroneously stated. I am not sure
10 that there are any such things.

11 BY MR. BROWN:

12 **Q. Take a moment to review it,**
13 **if you would. It's not that long.**

14 A. Well, I have read it. As
15 far as I can tell, it is accurate in the
16 sense that it states the terms of an
17 agreement, and those are the terms of the
18 agreement. It doesn't purport to recite
19 facts.

20 **Q. Okay. Look at the first**
21 **sentence. There is a reference there to**
22 **certain of the principal terms and**
23 **conditions.**

Do you see that?

Page 19

1 A. I do.

2 **Q. Were there other principal**
3 **terms and conditions that were left off**
4 **the Term Sheet?**

5 A. I don't believe there were
6 that had been negotiated, agreed on.

7 It is common that a Term
8 Sheet is subject to a definitive
9 agreement. And in a complicated
10 bankruptcy case, involving a complicated
11 settlement, it would be my understanding
12 and I believe the understanding of
13 everybody else that was involved in this
14 that this Term Sheet would only purport
15 to set out certain of the most -- what
16 the parties consider to be the most
17 important terms, and other terms would
18 remain to be negotiated as part of the
19 drafting of either the definitive Plan or
20 a more definitive settlement agreement or
21 whatever document would be required to
22 flesh out the details.

23 **Q. Okay. Can you turn to page**
24 **9, and you will see under the Romanette**

Page 20

1 **5, there is a sentence that begins,**
2 **"Provided however..."?**

3 A. Yes.

4 **Q. Do you know to what that**
5 **refers?**

6 MR. FINCH: Objection. I
7 caution the witness not to reveal
8 any privileged communications. If
9 you can answer the question
10 without divulging privileged
11 information, you can do so.

12 MS. HARDING: And I am going
13 to object also as to privilege as
14 to the relevancy of negotiations,
15 and I believe that -- well --
16 okay.

17 THE WITNESS: I am trying to
18 remember what this phrase referred
19 to at the time this Term Sheet was
20 entered into. As best I can
21 recall, at the time of the Term
22 Sheet, the concept that was
23 reflected by this language was
24 that what was going to be

Page 21

1 transferred to the Trust was
2 coverage for asbestos personal
3 injury claims, and to the extent
4 that there was coverage that
5 didn't -- that somehow or another
6 didn't cover asbestos personal
7 injury claims, like, for example,
8 workers' compensation insurance,
9 that wouldn't be transferred to
10 the Trust.

11 But since this Term Sheet
12 was superseded by the Plan
13 ultimately, I am not sure exactly
14 what the significance of this
15 particular term at this time is.

16 BY MR. BROWN:

17 **Q. Okay. Well, putting aside**
18 **workers' compensation coverage, is there**
19 **any other coverage that you are aware of**
20 **that Grace has under the policies that**
21 **are being transferred to the Asbestos PI**
22 **Trust?**

23 MR. FINCH: Objection to the
24 form.

Page 22

1 THE WITNESS: The answer to
2 that is certainly, yes.

3 I mean, for example, Grace
4 has insurance beginning in -- I
5 don't know -- 1986 or so that
6 contains asbestos exclusions,
7 running up through today, and none
8 of that insurance is being
9 transferred to the Trust because
10 it doesn't provide any coverage
11 for asbestos personal injury
12 claims.

13 BY MR. BROWN:

14 **Q. What if we limited it to**
15 **asbestos insurance rights? In other**
16 **words, the policies -- the asbestos**
17 **insurance rights are being transferred to**
18 **the Trust by Grace, correct?**

19 A. Well, you are using a term
20 that is a term that is defined in the
21 Plan, and as defined in the Plan, the
22 asbestos insurance rights under the terms
23 of the Plan and the Insurance Transfer
24 Agreement are being transferred to the

Page 23

1 Trust.

2 **Q. Okay. And does that include**
3 **all the coverages under the policies that**
4 **are covered by that term?**

5 A. I have no idea, because
6 asbestos insurance rights are not
7 asbestos insurance policies, and I have
8 not undertaken to examine each and every
9 policy that does or might provide
10 coverage for asbestos personal injury
11 claims to determine whether or not there
12 is some coverage under that policy that
13 doesn't and that might not be
14 transferred.

15 As a general proposition, my
16 recollection is that the Plan is pretty
17 specific about what's being transferred
18 and what's not.

19 There is an Exhibit-5, for
20 example, that lists various categories of
21 policies and settlement agreements and
22 things of that nature. There is the
23 Insurance Transfer Agreement; there are
24 schedules of insurance rights.

Page 24

1 Trying to answer a question
2 from memory that's as broad and all
3 encompassing as that, I think frankly is
4 virtually impossible, and I don't think I
5 can do it any better than I just did.

6 MR. BROWN: Okay. And just
7 so everyone knows how we are going
8 to be handling the question
9 regarding Plan documents, we are
10 going to mark certain Plan
11 exhibits as separate exhibits in
12 the deposition.

13 Mr. Lockwood has a
14 separately tabbed collection of
15 all the Plan documents. He wants
16 to work off of that. I have no
17 problem with that. But, for
18 purposes of the record, it will be
19 the individual Plan documents that
20 we are referring to.

21 THE WITNESS: For purposes
22 of the record, what I have in
23 front of me is the printed book
24 called Exhibit Book to First

Page 25

1 Amended Joint Plan of
2 Reorganization and Disclosure
3 Statement as of February 27, 2009,
4 which is the document that was
5 distributed to people to vote on
6 the Plan. And the only -- there
7 are no markings or anything in it.

8 What I have had done is, so
9 that I could have ready access to
10 the multiple -- well, there are 33
11 exhibits in this book, and I have
12 simply had numerical tabs placed
13 on the first page of each separate
14 exhibit, so that if somebody wants
15 me to find an exhibit, I can look
16 to the tab rather than pawing
17 through hundreds of pages of
18 documents to see where the
19 exhibit, in fact, can be found.

20 BY MR. BROWN:

21 **Q. All right. Mr. Lockwood,**
22 **can you take a look at Exhibit 6?**

23 MR. BROWN: And we will have
24 that marked as ACC-4.

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(ACC 30(b)(6)-4 marked for identification at this time.)

THE WITNESS: I have it.

BY MR. BROWN:

Q. Okay. And why don't you identify that document?

A. That is Exhibit 6 to Exhibit Book captioned Asbestos Insurance Transfer Agreement.

Q. Okay. And it has certain attachments to it, correct?

A. It does.

Q. Okay. Can you look at Schedule 1?

A. I am looking at it.

Q. Okay. Am I correct that all of the policies that are listed on Schedule 1 fit within the definition of asbestos insurance policies under the Plan?

A. I will need to look at this a little bit here.

As I understand it, and I am going to read from this document, "All

Page 28

Q. My question is, well, you will see the asbestos insurance rights starts off, "shall mean any and all rights, titles, privileges," and so forth.

Do you see that language?

A. I do.

Q. And that's with respect to asbestos insurance policies?

A. Well, among other things, yes.

Q. And those are all being transferred to the Asbestos PI Trust, correct?

MR. FINCH: Object to form.

THE WITNESS: The reason I am hesitating is I am not sure I can recall whether or not the general -- to answer the question, I have to look to see what the Plan says about the transfer and whether or not the Plan statement about what's being transferred. This is simply the definition.

Page 27

insurance policies that the Insurance Contributors have reason to believe potentially or actually provide insurance coverage for Asbestos Pi Claims are listed and described accurately on the attached Schedule 1." That, to my knowledge, is what Schedule 1 is.

Q. All right. Now, what I would like you to do is to look at Exhibit 1, which is the Joint Plan itself, and specifically page 5, definition 13.

MR. BROWN: And we will mark that as ACC-5.

(ACC 30(b)(6)-5 marked for identification at this time.)

MR. FINCH: What page do you want him to go to?

MR. BROWN: Page 5, definition 13.

THE WITNESS: Looking at it.

BY MR. BROWN:

Q. Asbestos Insurance Rights?

A. That is correct.

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There are other provisions that describe what is transferred to the Trust. I would have to look to the Plan to see what the definition of the assets being transferred is and then look at the Insurance Transfer Agreement, which was Exhibit-4, ACC Exhibit-4, and see whether those two are coextensive. I think they are, but that's what I would have to do to make sure.

BY MR. BROWN:

Q. Well, if you look at page 2 of the Transfer Agreement, the very first sentence is, "Effective upon the Effective Date, the Insurance Contributors hereby irrevocably transfer, convey, and grant to the Asbestos PI Trust all of their Asbestos Insurance Rights."

A. Okay.

Q. Now, bearing in mind that language and turning back to the

Page 30

1 definition of asbestos insurance rights,
2 which does have some restrictions at the
3 end of it, after the provided that
4 language on page 6 --

5 A. Yes, I see it.

6 Q. Other than what's excluded
7 from asbestos insurance rights in that
8 language in the definition, are all of
9 the Debtors' interests in the policies
10 that are on Schedule 1 of the asbestos
11 Insurance Transfer Agreement being
12 transferred to the Asbestos PI Trust, or
13 are some others being retained by the
14 Debtors?

15 A. All I can say is that what
16 is being transferred is all of the
17 asbestos insurance rights as defined in
18 the Plan. And if there are, in fact,
19 some other rights that are not asbestos
20 insurance rights, then the Plan does not
21 appear to transfer those.

22 Q. Okay. And the workers'
23 compensation coverage is one of those
24 items?

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1 A. That's my recollection, that
2 is workers' comp rights are not
3 transferred.

4 Q. Okay. Are you aware of
5 anything else that is not transferred?

6 A. Not as I sit here right now.
7 I do not recall having any knowledge of
8 anything that specifically carved out of
9 the policies, but, again, I mean, the
10 definitions say what they say.

11 Q. Okay. Can you go back to
12 the --

13 A. I mean, if you have some
14 specific item in mind that you want to
15 ask me about whether it is or it isn't
16 transferred, I will try and answer that.
17 But asked globally the way you are doing
18 it, I don't have any recollection of
19 anything.

20 Q. Okay. Can you turn back to
21 ACC-3, please.

22 MR. FINCH: What's that, the
23 Term Sheet?

24 MR. BROWN: Yes.

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1 THE WITNESS: That's the 8-K
2 with the Term Sheet in it, I
3 believe.

4 MR. BROWN: Yes.

5 THE WITNESS: I have it.

6 BY MR. BROWN:

7 Q. On page 10, Roman 4, if you
8 will just take a look at that for a
9 moment?

10 A. The provision captioned
11 Binding Effect?

12 Q. Correct.

13 A. I have read it.

14 Q. Okay. Does the ACC
15 understand the Term Sheet to be binding
16 on the parties to it?

17 MS. HARDING: Object under
18 408 and instruct the witness not
19 to answer if it reveals settlement
20 negotiations.

21 THE WITNESS: The ACC --

22 MR. BROWN: Wait.

23 MR. JACOB COHN: Does that
24 create an evidentiary privilege in

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1 discovery as opposed to
2 admissibility in trial?

3 MS. HARDING: I have made my
4 objection for the record.

5 MR. JACOB COHN: Jacob Cohn,
6 Federal Insurance Company.

7 BY MR. BROWN:

8 Q. I don't know that the Debtor
9 should be instructing a Rule 30 --

10 A. The Debtor hasn't instructed
11 the witness not to do anything as far as
12 I am aware.

13 MR. JACOB COHN: I heard her
14 try.

15 MS. HARDING: Suggest.

16 THE WITNESS: Would you read
17 back the question, please?

18 (The reporter read from the
19 record as requested.)

20 THE WITNESS: The ACC
21 understands that the Plan, when
22 the Plan is confirmed, will be
23 binding on it and everybody else
24 that is bound by a confirmed Plan.

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1 The ACC does not consider the Term
2 Sheet to have any binding effect
3 at this particular time in the
4 bankruptcy process.

5 BY MR. BROWN:

6 **Q. Did the Term Sheet have a**
7 **binding effect prior to the filing of a**
8 **Plan?**

9 MR. FINCH: Objection to the
10 extent that it calls for either a
11 legal conclusion or privileged
12 information.

13 You can answer, if you can.

14 THE WITNESS: Well, it calls
15 for the former, and I am not going
16 to refuse to answer.

17 If you want my opinion, it's
18 a question of contract law. I
19 personally doubt very much that as
20 a matter of contract law or
21 bankruptcy law, the Term Sheet was
22 binding, because, number one, as
23 under contract law, it wouldn't,
24 as I said earlier, have contained

1 **Q. Okay. Put that aside.**

2 **Just note the date. It's**
3 **April 6, 2008. So the next series of**
4 **questions I have pertains to the period**
5 **prior to that.**

6 A. Okay.

7 **Q. Were any asbestos insurance**
8 **entities involved in the negotiation of**
9 **the Term Sheet?**

10 MS. HARDING: Object --

11 THE WITNESS: Not that I
12 recall.

13 MS. HARDING: Object under
14 408.

15 BY MR. BROWN:

16 **Q. Were any asbestos insurance**
17 **entities invited to participate in the**
18 **negotiations of the Term Sheet?**

19 MS. HARDING: Same
20 objection.

21 THE WITNESS: Well, to the
22 extent that the Term Sheet
23 negotiations involve people
24 sitting down together and/or being

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1 all the material terms and
2 conditions. And so it would be
3 very difficult under doctrines
4 having to do with completeness of
5 contracts to be enforceable for it
6 to have been binding.

7 And, secondly, it wasn't a
8 Plan, and it wasn't a settlement
9 agreement that was separate from
10 the Plan. It recites by its terms
11 that "The parties shall use their
12 best efforts to incorporate the
13 terms in this Term Sheet into a
14 mutually agreeable Plan of
15 Reorganization to be filed with
16 the Bankruptcy Court as soon as
17 possible."

18 And, therefore, almost by
19 definition, it recognizes that as
20 a stand-alone document in a
21 bankruptcy context, it's not
22 binding on anybody, in my opinion.

23 But that's just my opinion.

24 BY MR. BROWN:

1 on telephone calls together to
2 discuss it and agree on it, to my
3 knowledge, I don't recall any.

4 Whether or not the Debtors,
5 for example, had communications
6 unknown to the ACC with their
7 insurers on the subject matter
8 that ultimately was reflected in
9 the Term Sheet, I don't know.

10 BY MR. BROWN:

11 **Q. Okay. Well, for purposes of**
12 **this question, I am asking for the ACC's**
13 **knowledge.**

14 A. I understand. But I want to
15 make it clear what the limitations of the
16 ACC's knowledge is.

17 **Q. I understand.**

18 **To the ACC's knowledge, were**
19 **any asbestos insurance entities consulted**
20 **regarding any provision in the Term**
21 **Sheet?**

22 MS. HARDING: Same
23 objection.

24 THE WITNESS: To the ACC's

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1 knowledge, they are unaware of any
2 such consultations.

3 BY MR. BROWN:

4 **Q. Did any asbestos insurance**
5 **entity consent to the assignment of the**
6 **policy or proceeds thereof prior to the**
7 **execution of the Term Sheet?**

8 A. Not to the knowledge of the
9 ACC as an entity or me, in particular.
10 My make statements about the ACC's
11 knowledge, I am speaking obviously of
12 both its and my knowledge at the same
13 time.

14 **Q. Did any asbestos insurance**
15 **entity agree to any term in this Term**
16 **Sheet before the parties in the Term**
17 **Sheet executed it?**

18 A. I have no idea.

19 **Q. Do you have any knowledge of**
20 **any such --**

21 A. I have no knowledge that
22 they did and I have no knowledge that
23 they didn't.

24 **Q. Okay. The initial Joint**

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1 **Plan was filed on September 19th, 2008,**
2 **correct?**

3 A. I don't, as I sit here,
4 right now, unrefreshed by looking at the
5 document, recall that that's the specific
6 date, but A, it sounds about right, and
7 B, I will take your word for it, if you
8 are representing that that's the date.

9 **Q. Okay. And along with the**
10 **filing of the initial Plan, there was**
11 **also a filing of the Asbestos PI Trust**
12 **Agreement and the Asbestos PI TDP,**
13 **correct?**

14 A. I don't recall actually
15 whether those documents were filed at
16 exactly the same time the Plan was filed
17 or whether they were filed on some later
18 day.

19 They were certainly filed at
20 some approximation of the same time, but
21 it could have been a month later or
22 something like that. Again, what was
23 filed with the court is a matter of
24 record, so...

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1 **Q. Okay. Between April 6, 2008**
2 **and September of 2008, is it fair to say**
3 **that the Plan documents were being**
4 **drafted?**

5 MS. HARDING: Object under
6 408.

7 THE WITNESS: Of course.

8 BY MR. BROWN:

9 **Q. And who were the parties**
10 **that were involved in the negotiation of**
11 **Plan documents?**

12 MS. HARDING: Object under
13 408.

14 MR. FINCH: Are you talking
15 about entities or people?

16 THE WITNESS: A lot.

17 MR. BROWN: Let's start with
18 entities.

19 MR. FINCH: That, you can
20 answer.

21 THE WITNESS: Entities,
22 representatives of the Debtors,
23 the Equity Committee, the Future
24 Claimants' Representative and the

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1 ACC, and I can't remember whether
2 there was any involvement by
3 representatives of the Unsecured
4 Creditors' Committee or not. I
5 just don't remember at this point.

6 BY MR. BROWN:

7 **Q. How about any of the Sealed**
8 **Air indemnified parties?**

9 MS. HARDING: Object under
10 408.

11 THE WITNESS: At some point,
12 representative of the Sealed Air
13 indemnified parties were involved
14 in reviewing drafts and commenting
15 on drafts, et cetera. I think
16 they were involved before we filed
17 the first Plan, but I am not -- I
18 mean, I know they were -- right
19 now, we are looking at the Amended
20 Plan filed in February 27, 2009.
21 I am quite confident that they
22 were involved in discussing --
23 reviewing and discussing this
24 Plan.

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I just don't remember for sure whether they were involved in the first Plan or whether they got involved between the first Plan and this Plan. I think they were involved in the first Plan.

BY MR. BROWN:

Q. Okay. Would your answer be the same for the Fresenius indemnified parties?

MS. HARDING: Object under 408. I think we should take a break. I would like to consult with counsel.

MR. BROWN: Okay.

THE WITNESS: Does that include me or do you want to just talk to him?

MS. HARDING: I will talk to Nate.

(There was a break from 10:15 a.m. to 10:17 a.m.)

MR. FINCH: Can we read back the pending question?

BY MR. BROWN:

Q. Let me, Mr. Lockwood, refer you back to ACC-2, which was the objection, and direct your attention specifically to paragraph 3.

A. I see it.

MR. BROWN: Okay. This is more directed to Nate than anyone else. There are, as you might guess, a whole host of questions that lots of people in this room, including myself, would want to ask concerning the negotiations of the Plan and the Plan documents as well as questions about prior drafts that weren't filed.

Is it safe to say that you will object to those questions and instruct the witness not to answer?

MR. FINCH: That is correct.

MR. BROWN: Okay. Then with the caveat that we won't ask them simply because we are not here to

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(The reporter read from the record as requested.)

MR. FINCH: You can answer that question.

THE WITNESS: In general, yes, although their involvement was less.

BY MR. BROWN:

Q. Okay. What was the involvement of Sealed Air and Fresenius in the drafting of the Plan documents?

MR. FINCH: Objection, instruct the witness not to answer.

MS. HARDING: Objection.

MR. JACOB COHN: Basis, please.

MR. FINCH: Basis is Judge Fitzgerald's ruling that Plan negotiations and the draft Plan Agreement are not relevant to the confirmability of the Plan.

MS. HARDING: Same objection.

waste everyone's time, I am going to move forward and not ask questions about the negotiations.

Can we have an agreement on that ground?

MR. FINCH: Sure. We can have an agreement on that point.

MR. BROWN: And in the event that that is ever reversed or your position is not upheld by the court, we would have an opportunity to come back and ask questions about the drafting as well as the negotiations.

MR. FINCH: If Judge Fitzgerald reverses herself on what she has ruled in various other cases, you would have that opportunity.

MR. BROWN: Or some higher court.

MR. FINCH: Or some higher court.

MR. BROWN: Fair enough.

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1 MR. JACOB COHN: I want to
2 be perfectly clear here that you
3 are not relying upon not a ruling
4 that you don't need to answer
5 questions at these depositions on
6 this subject, but your position is
7 that this is a relevance objection
8 and you are instructing not to
9 answer on the basis of relevance.

10 MR. FINCH: That's right.

11 MR. JACOB COHN: And you are
12 aware of the local Delaware rules
13 on this subject?

14 MR. FINCH: Yes, I am.

15 MR. JACOB COHN: I am.

16 MR. BROWN: Thanks, Jacob.

17 MR. SPEIGHTS: Excuse me.
18 This is Dan Speights, representing
19 Anderson Memorial Hospital.

20 Mr. Finch, would you advise
21 us of what rulings you are
22 referring to?

23 MR. FINCH: Sure. If you
look at the ACC's objections to

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1 knowledge whether they were or
2 were not.

3 BY MR. BROWN:

4 **Q. To your knowledge, did any**
5 **asbestos insurance entity actually**
6 **participate?**

7 MS. HARDING: Same
8 objection.

9 THE WITNESS: I have no
10 knowledge that they did.

11 BY MR. BROWN:

12 **Q. Was any asbestos insurance**
13 **entity consulted concerning any term or**
14 **provision in the Joint Plan or any Plan**
15 **documents?**

16 MS. HARDING: Same
17 objection.

18 THE WITNESS: In the same
19 period?

20 MR. BROWN: Correct.

21 BY MR. BROWN:

22 **Q. From April 2008 to**
23 **September, when the initial Plan was**
24 **filed in September of 2008.**

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1 the 30(b)(6) notice, Dan --

2 MR. SPEIGHTS: If it's
3 contained in there, just refer to.
4 I want to make sure if we want to
5 file a motion, we have the basis
6 of your objection.

7 MR. FINCH: Yes. The basis
8 of the objection is set forth on
9 page 2, paragraph number 3, and
10 ACC deposition Exhibit-2 to this
11 deposition.

12 MR. SPEIGHTS: Thank you,
13 Mr. Finch.

14 BY MR. BROWN:

15 **Q. Okay. Mr. Lockwood, in the**
16 **period between the Term Sheet and the**
17 **filing of the initial Plan in September,**
18 **was any asbestos insurance entity invited**
19 **to participate in the negotiation of the**
20 **Plan documents or the drafting of the**
21 **Plan documents?**

22 MS. HARDING: Same
23 objection.

24 THE WITNESS: I have no

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1 A. I have no knowledge that
2 anyone was.

3 **Q. Were any asbestos insurance**
4 **entities consulted regarding the**
5 **assignment or transfer of their policies**
6 **or proceeds under their policies to the**
7 **Asbestos PI Trust in that time period?**

8 MS. HARDING: Same
9 objection.

10 THE WITNESS: I have no
11 knowledge that they were or were
12 not.

13 BY MR. BROWN:

14 **Q. Did any consent?**

15 A. I have no knowledge --

16 MS. HARDING: Same
17 objection.

18 THE WITNESS: -- that anyone
19 did, in fact, consent.

20 BY MR. BROWN:

21 **Q. Okay. Now, I want to focus**
22 **your attention now on the period after**
23 **the initial Plan was filed.**

24 **In that period, after the**

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1 initial Plan and Plan documents were
2 filed, did GEICO consent to the Joint
3 Plan or any Plan document or any
4 provision in the Plan or Plan documents?

5 A. Not to my knowledge.

6 Q. Okay. Would your answer be
7 the same for Republic Insurance Company?

8 A. Yes.

9 Q. And OneBeacon American
10 Insurance Company?

11 A. Yes.

12 Q. And Seaton Insurance
13 Company?

14 A. Yes.

15 Q. How about any other asbestos
16 insurance entity? Would your answer be
17 the same?

18 A. No, I don't think it would,
19 actually. I believe -- and I would have
20 to sort of try and reconstruct and
21 recollect the timing, but I believe there
22 was a settlement agreement entered into
23 with Equitas during some time period. It
actually might have predated. It might

1 A. The cover page?

2 Q. No, no. The first --

3 A. Numbered page.

4 Q. -- well, it's actually not
5 numbered, but it's 1. It should be 1.

6 A. Okay. I have it.

7 Q. All right. Midway down the
8 page, it says, "This Plan constitutes a
9 settlement of all Claims in the Demands
10 against the Debtors on, and subject to,
11 the terms described herein and the other
12 Plan Documents."

13 Are the Debtors settling the
14 asbestos PI claims against them through
15 this Plan?

16 A. I think --

17 MS. HARDING: Object to
18 form.

19 THE WITNESS: I think it
20 would be a fair characterization
21 that the Plan embodies a
22 compromise between the class of
23 claimants consisting of the
24 asbestos PI claimants and others.

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1 have predated the Plan.

2 But, in any event, the
3 settlement agreement with Equitas to my
4 recollection involved its agreeing to
5 either this Plan or a 524(g) Plan that
6 this Plan would qualify as.

7 And I believe that there was
8 also a settlement agreement with the
9 KWELM Companies that either by its terms
10 or implicitly represented the KWELM
11 Companies' consent to this Plan, to the
12 first Plan. Those are the only two that
13 come to mind.

14 Q. Why don't we turn to the
15 first Amended Joint Plan, which is
16 Exhibit-1 in your book.

17 A. Okay. I have it.

18 MR. FINCH: Exhibit-5 to the
19 deposition.

20 THE WITNESS: It's ACC
21 Exhibit-5.

22 BY MR. BROWN:

23 Q. All right. Could you turn
24 to the first page?

1 And if the Plan were confirmed
2 that that compromise could be
3 called a settlement between the
4 Debtors and those entities, under
5 which there would be a Trust
6 created and the claims would be
7 brought to the Trust, not against
8 the Debtors, I think that would be
9 a fair characterization, yes.

10 BY MR. BROWN:

11 Q. Is it a settlement of the
12 demands that have not yet even been
13 asserted against the Debtors?

14 MS. HARDING: Object to
15 form.

16 MR. FINCH: Object to form.

17 THE WITNESS: That calls for
18 a legal conclusion at an almost
19 metaphysical level, frankly.

20 I guess you could conceive
21 of it as that or you could just
22 say that the Plan itself is what
23 it is. I mean, it has the effect
24 under 524(g) of the bankruptcy

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1 code on the holders of future
2 demands that the bankruptcy code
3 prescribes.

4 It's hard to come to an
5 answer because settlement sort of
6 implies -- I mean, to the extent
7 that the Future Claimants
8 Representative is regarded as the
9 equivalent of a guardian ad litem
10 for the Future Claimants, which is
11 one way of looking at it, you
12 could characterize it as a
13 settlement.

14 But, again, the Future
15 Claimants Representative exists,
16 only in a legal capacity of
17 somebody appointed by the
18 bankruptcy court for that purpose,
19 has no independent ability to
20 settle things. So, as I said
21 before, I mean, I am not sure the
22 question, A, could be answered
23 and, B, is meaningful.

BY MR. BROWN:

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1 Plan that's an issue that will
2 only get resolved by some other
3 court in the event there is a
4 dispute between the Trust and any
5 asbestos insurance company over
6 whether it is a, quote, settlement
7 that's binding on them.

8 That is not something that
9 the Plan or the Confirmation Order
10 under the insurance neutrality
11 provisions of this Plan purports
12 to resolve.

13 BY MR. BROWN:

14 **Q. Is it intended to be**
15 **binding?**

16 MS. HARDING: Object to
17 form.

18 THE WITNESS: Intended by
19 whom?

20 BY MR. BROWN:

21 **Q. By the ACC?**

22 MR. FINCH: Object to the
23 question to the extent it calls
24 for privileged or work product

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1 **Q. To the extent it is a**
2 **settlement, is it binding on the asbestos**
3 **insurance entities in the view of the**
4 **ACC?**

5 MS. HARDING: Object to the
6 form. Calls for a legal
7 conclusion.

8 THE WITNESS: That question
9 is unanswerable as phrased
10 because, I mean, binding for what
11 purpose?

12 BY MR. BROWN:

13 **Q. For purposes of insurance**
14 **coverage.**

15 MS. HARDING: Same
16 objection.

17 THE WITNESS: The extent of
18 which, A, it's a settlement within
19 the meaning of, for example,
20 insurance comprehensive general
21 liability insurance policies that
22 talk about settlements, B, it
23 could be made without the consent
24 of insurance companies, under the

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1 analysis. To the extent the ACC
2 has a position on that, that it's
3 not privileged and work product,
4 you can answer.

5 THE WITNESS: I guess the
6 best answer I could give you on
7 that from the ACC's perspective is
8 that -- well, let me back up a
9 little bit. When you say "is it
10 intended," you are describing the
11 settlement. The settlement is a
12 125-page Plan with multiple
13 exhibits.

14 In light of the insurance
15 neutrality provisions, there are
16 clearly aspects that are not
17 binding on the insurers, but the
18 question of whether -- I guess the
19 best way I could put it is the ACC
20 would hope that in the event that
21 post-consummation, the Trust
22 sought coverage from any
23 particular set of insurers, whose
24 asbestos insurance rights were

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1 assigned to the Trust, that the
2 Trust would be able to obtain such
3 coverage, either by agreement with
4 the asbestos insurance companies
5 or through coverage litigation in
6 some coverage court, which
7 coverage litigation might entail a
8 decision by a judge that in some
9 manner or another what the Trust
10 was doing pursuant to the Plan in
11 terms of resolving individual
12 asbestos claims was, in fact,
13 binding on the insurers. That's
14 about the best I can do.

15 BY MR. BROWN:

16 **Q. Okay. To the extent it**
17 **constitutes a settlement of asbestos PI**
18 **claims, is it superseded by Section 7.15**
19 **entitled Insurance Neutrality?**

20 A. That question is almost
21 incomprehensible to me, because Section
22 7.15 is sort of a form selection
23 provision. Essentially, in my view of
24 it, what it does is it says to the extent

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1 that there are disagreements about the
2 Trust's rights under transferred
3 insurance assets, those disputes are
4 going to get resolved by the parties, the
5 insurers, and the Trust at a later date
6 in front of a later court.

7 And so some later court
8 would determine whether it was a
9 settlement or not. The 7.15 itself
10 doesn't purport to say whether it is or
11 isn't a settlement. It says essentially
12 that some other court, if necessary, will
13 have to decide that issue because the
14 insurers don't want to have coverage
15 litigation in this bankruptcy case.

16 **Q. All right. But the sentence**
17 **that we are referring to on page 1 says,**
18 **"The Plan constitutes a settlement of all**
19 **Claims and Demands against the Debtors**
20 **on, and subject to, the terms described**
21 **herein and the other the Plan Documents."**

22 A. That is --

23 **Q. My question is, is that**
24 **language superseded by the insurance**

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1 **neutrality language that appears in 7.15?**

2 MS. HARDING: Objection.

3 MR. FINCH: Objection, asked
4 and answered.

5 THE WITNESS: I cannot give
6 you any better answer to that than
7 the one I gave you already.

8 You are asking me whether a
9 descriptive sentence in a Plan
10 supersedes a form selection clause
11 in some other part of the Plan,
12 and, to me, that's just -- I don't
13 even understand how one could
14 supersede the other in the first
15 place. I mean, if you can explain
16 to me why you think it supersedes
17 it, maybe I could have a more
18 specific answer.

19 BY MR. BROWN:

20 **Q. Well, why don't you look at**
21 **7.15 A on page 87 of the Plan.**

22 A. Okay.

23 **Q. As I read that sentence,**
24 **other than what appears in the other**

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1 **portions of 7.15, nothing in the Plan,**
2 **the Plan documents, the Confirmation**
3 **Order, is to operate or shall operate --**
4 **"shall in any way operate to, or have the**
5 **effect of, impairing any Asbestos**
6 **Insurance Entity's legal, equitable or**
7 **contractual rights, if any, in any**
8 **respect."**

9 A. Yeah?

10 MS. HARDING: Object to
11 form. Is there a question?

12 MR. BROWN: I am reading the
13 language first. Can I finish?

14 MS. HARDING: I am sorry. I
15 thought you were asking a
16 question. I didn't hear it.

17 BY MR. BROWN:

18 **Q. To the extent that the Plan**
19 **or the Confirmation Order constitutes a**
20 **settlement of asbestos PI claims against**
21 **the Debtors, is that going to then be**
22 **binding upon the insurers in coverage**
23 **litigation?**

24 MS. HARDING: Object to

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1 form. It calls for a legal
2 conclusion.

3 THE WITNESS: If a coverage
4 court decides that it's a
5 settlement and that it's a
6 settlement that's reasonable and
7 that it doesn't have to be
8 consented to by insurers, then the
9 coverage court will have decided
10 that the settlement isn't
11 impairing the insurers' rights
12 under their policies.

13 That's what I mean by it's
14 up to the coverage court. Your
15 question assumes that for it to be
16 a settlement, it would have to
17 impair the insurers' rights. My
18 limited understanding of insurance
19 law is that that may be true or it
20 may not be true. But what this
21 says is that the Plan and the
22 Confirmation Order aren't
23 purporting to resolve that issue.

Your rights are what they

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1 specifically (a) under 13.

2 A. I see it.

3 Q. Is that language intended to
4 include any property damage-related
5 causes of action?

6 A. It depends on what you mean
7 by included. What it basically means is
8 that, as I understand it, that the Trust
9 gets the rights; nobody else gets the
10 rights. The Trust can then seek coverage
11 from the insurers.

12 Since the Trust has no
13 asbestos property damage claims to assert
14 against the insurers, it will not be
15 asserting asbestos property claims
16 against the insurers. But the effect of
17 the transfer would mean that, for
18 example, Grace or a property damage
19 claimant could not assert property damage
20 claims under that insurance coverage
21 because those rights have been assigned
22 to the Trust and they are, therefore, no
23 longer available to be invoked or
24 utilized by anybody else.

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1 are; you will be able to present
2 them to a coverage court. And the
3 coverage court, if it agrees with
4 you, will say, first, the Plan
5 doesn't control the outcome of
6 this decision because that's what
7 7.15(a) says, and, secondly, you
8 are correct in asserting that this
9 is an unconsented-to settlement or
10 it's not a settlement or whatever
11 defense you have applies. And it
12 will say you win, you don't have
13 any coverage obligations for this
14 claim or these claims or whatever.
15 That's my understanding of how
16 this is supposed to work.

17 BY MR. BROWN:

18 Q. Okay. I am going to go
19 through the Plan and various items. We
20 are going to jump around a little bit.
21 So why don't we first turn to page 5.

22 A. I have it.

23 Q. And the definition -- we
24 looked at this earlier -- 13,

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1 Q. Okay. Let's turn to page 6,
2 Asbestos Insurance Coverage Defenses, 6
3 and 7.

4 A. Definition 16.

5 Q. Correct.

6 A. I see it.

7 Q. Did you have a chance to
8 read it?

9 A. Yes.

10 Q. And there are two exceptions
11 that are listed there to asbestos
12 insurance coverage defenses?

13 A. Correct.

14 Q. And the first one says,
15 "...the Plan or any of the Plan documents
16 do not comply with the Bankruptcy
17 Code..."

18 So, as I understand that, if
19 in a subsequent coverage action, an
20 insurer sought to argue that the Plan or
21 Plan documents don't comply with the
22 bankruptcy code, they would be precluded
23 from doing so by virtue of the
24 confirmation of the Plan; is that

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1 correct?

2 A. Correct.

3 **Q. And the second one has to**
4 **deal with the assignment of policy**
5 **rights, correct?**

6 A. Correct.

7 **Q. And asbestos insurance**
8 **entities would be prohibited from**
9 **litigating that issue?**

10 A. If the bankruptcy court
11 decided that those consent rights were
12 effectively preempted by the bankruptcy
13 code. If it decided the other way, then
14 they wouldn't be precluded from doing so.

15 **Q. Okay. If you go before the**
16 **two exceptions, it describes "Asbestos**
17 **Insurer Coverage Defenses include any**
18 **defense based on the terms of the Plan or**
19 **the Plan documents or the manner in which**
20 **the Plan or Plan documents were**
21 **negotiated..."**

22 **What if an asbestos**
23 **insurance entity wanted to argue in**
24 **subsequent coverage litigation that the**

1 this dispute is arising could
2 argue that it's not collusion
3 because of the insolvency clauses
4 in the CGL policies and that,
5 therefore, almost by definition, a
6 bankruptcy case doesn't involve
7 collusion.

8 They couldn't argue that the
9 bankruptcy court had decided that
10 it wasn't collusion, because the
11 insurance neutrality provision
12 would preclude that argument. But
13 it could certainly argue to the
14 coverage court that the type of
15 agreement that is entered into
16 here, as a result, as I said, of
17 state law -- of the facts and the
18 state law didn't amount to
19 collusion. But as such, the
20 collusion defense is not, in my
21 opinion, precluded by this
22 language.

23 BY MR. BROWN:

24 **Q. Okay.**

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1 resolution of asbestos PI claims was the
2 product of some sort of collusion between
3 the Plan proponents? Could that be
4 argued by the asbestos insurance
5 companies in the subsequent coverage
6 litigation?

7 MS. HARDING: Object to
8 form.

9 MR. FINCH: Objection to
10 form.

11 THE WITNESS: First, it's
12 hypothetical. Second, it's a
13 question sort of to some extent of
14 insurance law.

15 But subject to that, and the
16 fact that I don't profess to be an
17 expert on this subject, it is my
18 understanding that an asbestos
19 insurer could argue any state law
20 coverage defense that it had,
21 including collusion.

22 It is also my understanding
23 that the Trust in this
24 hypothetical scenario in which

1 A. Again, that's my legal
2 opinion. You got it, for whatever it's
3 worth.

4 **Q. Let's back up then. Is it**
5 **intended to prevent such an argument --**
6 **let's back up.**

7 A. Intended by who?

8 **Q. For purposes of these**
9 **questions -- and I will try to fix my**
10 **questions -- the ACC, because that's you**
11 **are here to speak for.**

12 MR. FINCH: Object to form.
13 It assumes there is an intent.
14 Object to form.

15 MS. HARDING: Object to
16 form, too.

17 THE WITNESS: The intent of
18 the ACC in this language, frankly,
19 is to satisfy what we perceive to
20 be the requirements of the Third
21 Circuit decision in combustion
22 engineering for rendering a Plan
23 sufficiently, quote, neutral,
24 close quote, as to its impact on

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1 is Insurance Contributor.

2 A. I see it.

3 **Q. "Insurance Contributor"**
4 **shall mean any of the Debtors, the**
5 **Reorganized Debtors, and the Non-Debtor**
6 **Affiliates identified in the Asbestos**
7 **Insurance Transfer Agreement."**

8 Can you turn to that
9 agreement, which is Exhibit-6 to the
10 Plan, ACC-4, in this deposition.

11 And I couldn't find where
12 the Non-Debtor affiliates are identified
13 in this agreement.

14 A. If you look at the first
15 page, third line, it refers to including
16 "without limitation, the Non-Debtor
17 Affiliates identified in Exhibit 16 to
18 the Plan."

19 If you turn to Exhibit-16 to
20 the Plan, you will see a three-page list
21 of Non-Debtor affiliates.

22 **Q. Can I -- I don't have that**
23 **in front of me. Can I just take a look**
24 **at that?**

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1 assigned insurance rights from the
2 Debtor, you can't have a lot of
3 other Debtor-owned entities
4 retaining possible rights to that
5 insurance, because you could never
6 resolve it with the insurers.

7 And so from my perspective,
8 it's important to make sure that
9 there aren't going to be competing
10 claims. These Non-Debtor
11 affiliates, for the most part, if
12 not entirely, are not companies
13 that were pre-petitioned
14 defendants in asbestos litigation.
15 And the purpose of this is really
16 more to prevent them -- it's
17 almost more like a forbearance or
18 a give-up-your-rights provision
19 than it is the actual assignment.

20 The Trust is not likely to
21 be asserting claims on behalf of
22 AA consultancy and cleaning
23 Company, Limited, to use the first
24 name on the Non-Debtor affiliate

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1 A. Certainly. It's Exhibit-16.
2 It's an incorporation by reference.

3 **Q. Mr. Lockwood, I just took a**
4 **look at Exhibit-16 in the Plan, and I**
5 **didn't see Fresenius or Sealed Air on**
6 **that.**

7 Is that correct?

8 A. Yes, I think that's correct.
9 This is a list, as I understand it, of
10 affiliates of the Debtor, and I don't
11 believe the Debtor regards Fresenius and
12 Sealed Air as its affiliate.

13 **Q. Okay. What is the basis for**
14 **the assignment of policy rights of**
15 **Non-Debtor affiliates?**

16 MS. HARDING: Object to
17 form.

18 MR. FINCH: Object.

19 You can answer.

20 THE WITNESS: Well, in my
21 personal view of this, there are
22 two answers to that question. One
23 is that in order to have the Trust
24 have the ability to deal with

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1 list. But if there were some sort
2 of derivative liability that
3 would -- remember, these are all
4 entities that are
5 asbestos-protected parties as
6 well.

7 BY MR. BROWN:

8 **Q. Right.**

9 A. So the claims against them
10 are going to the Trust. So the insurance
11 covering those claims, if any existed,
12 ought to go to the Trust as well.

13 **Q. I think you mentioned that**
14 **most of them were not involved to your**
15 **knowledge in any kind of asbestos**
16 **litigation.**

17 Do you know of any of them
18 that were?

19 A. I really don't know. I have
20 never made and I am not sure anybody for
21 the committee has ever made any effort to
22 determine whether there were.

23 The concern obviously was
24 that somebody could start trying to dream

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up some kind of derivative successor liability, veil piercing, alterego, whatever kind of claims, and the notion was that Grace's economic enterprise, which included the Non-Debtor affiliates, were going to be freed of asbestos liability.

So if there aren't any claims asserted against them, then nothing ever gets enjoined. The injunction only kicks in in the event that a claim actually attempts to assert derivative liability of Grace against one of these entities.

Q. Do you know if any of them have asbestos liabilities for their own products or actions?

A. I am not aware of any such allegations or claims by anybody. I have never seen them or heard of them.

Q. Okay. Can you turn to page 33 of the Joint Plan, definition 178.

A. I see it.

Q. Definition 178 makes

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companies?

A. Yes.

Q. Among the insurance companies that are listed on this document is American Employers, which for now is OneBeacon; Employers Commercial Union, which is also OneBeacon; GEICO; Republic; and Unigard Security, which is now Seaton.

Do you have any understanding of what causes of action the Debtor is retaining with respect to those four insurance companies?

A. No. My only understanding is that they don't include causes of action relating to asbestos insurance rights, which are referred to in the exclusion at the end of 178.

Q. Do you have an understanding as to whether the Debtors will continue to be insurers under any of the policies issued by those companies or whether the Asbestos PI Trust will become the punitive insurer?

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reference to Exhibit-19 to the Plan.

Do you see that?

A. Yes.

Q. And that's entitled Retained Causes of Action Schedule. And actually I think we will get that marked.

MR. FINCH: Are you going to mark Exhibit-19 to the Plan?

MR. BROWN: Yes.

THE WITNESS: This was supposed to be Exhibit-19. This is Exhibit-5 to the Plan.

MR. BOERGER: Sorry. Here you go.

(ACC 30(b)(6)-6 marked for identification at this time.)

BY MR. BROWN:

Q. If you thumb through there, Mr. Lockwood, you would get to page 10 where it says Retained Causes of Action (Insurance Claims)?

A. Uh-huh.

Q. And then it goes on for several pages, listing multiple insurance

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MS. HARDING: Object to form.

MR. FINCH: Object to form.

THE WITNESS: When you say those insurance policies, which insurance policies are you talking about?

BY MR. BROWN:

Q. Whatever ones are included within the Retained Causes of Action.

MR. FINCH: Object to form.

THE WITNESS: I believe that if it's a retained cause of action, by definition, the Trust is not going to be the punitive insured under whatever cause of action. Indeed, I am not sure that the Trust -- there is sort of a semantic issue when you talk about the Trust becoming an insured.

The Trust has whatever rights under the insurance transfer it gets. Whether that

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1 would make it a, quote, insured,
2 close quote, for purposes of
3 insurance law, I have absolutely
4 no idea. That's a terminological
5 issue.

6 But my understanding of this
7 is that whatever rights Grace is
8 retaining against the four
9 companies that you identified are
10 mutually exclusive of any rights
11 that the Asbestos PI Trust is
12 getting.

13 And so since I don't know
14 what policies Grace is retaining
15 rights to or what coverages, all I
16 can say is that whatever they are,
17 they are not rights that were
18 transferred to the Trust. Grace
19 and the Trust aren't going to be
20 trying to make claims on the same
21 set of rights.

22 BY MR. BROWN:

23 **Q. But they may make claims on
the same set of policies?**

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1 A. I don't think so, because I
2 believe that the assignment of the
3 asbestos insurance rights relates to
4 policies that, as a general proposition,
5 Grace is not retaining any rights in.

6 So I would speculate that
7 you must be talking about other policies,
8 but since I have no idea what retained
9 rights Exhibit-19 or Retained Causes of
10 Action refer to, I really can't answer
11 the question.

12 **Q. Do you know whether anyone
13 has any idea what retained rights are --**

14 A. I would assume that the
15 Debtor knows what it thought it was
16 retaining, because that particular
17 exhibit was something that was prepared
18 by the Debtor.

19 **Q. Okay. Is there any plan to
20 your knowledge to update this exhibit so
21 that it's a little more clear in terms of
22 what is being retained other than simply
23 putting the name of the entity and an
24 address?**

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1 MS. HARDING: Objection to
2 form.

3 MR. FINCH: Objection.

4 THE WITNESS: Prior to this
5 deposition, I am not aware of any
6 undertaking by anybody to do an
7 update of this. Whether or not
8 the result of this deposition or
9 some other deposition, somebody
10 might possibly make such a
11 decision in the future, would be
12 rank speculation at this point.

13 BY MR. BROWN:

14 **Q. Would it be fair to say that
15 absent that, we are not really going to
16 know what's retained?**

17 MR. FINCH: Object the form.

18 MS. HARDING: Object to
19 form.

20 THE WITNESS: I told you
21 earlier, I would assume that
22 somebody at Grace knows what is
23 sought to be retained by this. I
24 don't know who that person is, but

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1 somebody probably does.

2 BY MR. BROWN:

3 **Q. Okay. If you turn to page
4 37 of the Joint Plan, definition 200.**

5 A. Ah, yes. I see it.

6 **Q. Okay. I have a few
7 questions on this one.**

8 It says, "'Settled Asbestos
9 Insurance Company' shall mean any
10 Asbestos Insurance Entity that has
11 entered into an Asbestos Insurance
12 Settlement Agreement prior to the
13 conclusion of the Confirmation
14 Hearing..."

15 **What's the basis for
16 limiting it to prior to the confirmation
17 hearing?**

18 MR. FINCH: Object. To the
19 extent that calls for privileged
20 information or work product, you
21 are not allowed to answer. To the
22 extent you can answer that without
23 divulging privileged
24 communications, you can do so.

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1 MS. HARDING: Same
2 objection.

3 THE WITNESS: 524(g) of the
4 bankruptcy code permits you to
5 protect an asbestos insurance
6 company that is identifiable by
7 name or as part of the
8 identifiable group at the time the
9 Plan is confirmed.

10 In any case, you have to
11 have a cut-off date of some sort.
12 It's a decision of any Plan
13 proponents as to where you are
14 going to have that cut-off point
15 occur or when.

16 Here, the Plan proponents
17 drafted and agreed on a Plan that
18 says it has to be prior to the
19 conclusion of the confirmation
20 area. That's the basis for it.

21 BY MR. BROWN:

22 **Q. Okay. They could, if they**
23 **wanted, agree to some later date,**
correct?

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1 MR. FINCH: Object to the
2 form.

3 THE WITNESS: Subject to the
4 strictures of the statute itself.
5 You can always have a different
6 Plan from the Plan -- from any
7 given Plan. I mean, 524(g) plans
8 don't come out of a form book.

9 BY MR. BROWN:

10 **Q. By statute, you mean 524(g)?**

11 A. Yes.

12 **Q. Is it the ACC's position**
13 **that extending protected status to**
14 **settled asbestos insurance companies has**
15 **to be done or the settlement has to occur**
16 **pre-confirmation?**

17 A. Pre-confirmation? You are
18 asking me, again, for a legal conclusion.
19 I don't know that the Grace Committee has
20 arrived at a legal conclusion on that
21 subject.

22 **Q. Would your answer be the**
23 **same if the question was pre-effective**
24 **date?**

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1 A. Again, you are asking me for
2 a legal opinion. I have had occasion to
3 consider this issue in other cases and
4 have arrived at the personal conclusion
5 that there is a risk that if you do not
6 have the ability to identify an insurance
7 company by name prior to the effective
8 date, that you might find yourself unable
9 to obtain 524(g) protection for such an
10 insurer if you tried to make a settlement
11 later.

12 On the other hand, there are
13 arguments that you could draft a
14 provision in such a way that could
15 describe the things generically, anybody
16 who settles by thus and such a date.

17 I mean, there is
18 uncertainty. As far as I am aware, there
19 is no case law that tells you whether you
20 can or cannot have a Plan provision that
21 would be open-ended enough to allow you
22 to add a settlement insurer as a
23 protected party after the effective date
24 of a Plan.

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1 **Q. 524(g) doesn't require that**
2 **the party actually be identified by name,**
3 **does it?**

4 MS. HARDING: Object to the
5 form, also a legal conclusion.

6 THE WITNESS: My best
7 recollection of the statute is
8 that it says that it has to be
9 identified by name or as member of
10 an identifiable group, whatever
11 that means.

12 BY MR. BROWN:

13 **Q. Okay. Are you aware of any**
14 **confirmed 524(g) plans where 524(g)**
15 **protection has been extended to an**
16 **insurer after the Plan has been**
17 **consummated?**

18 A. I believe so. I don't
19 believe that there was a contest over
20 whether such an extension after the fact
21 was legally permissible or not, however.

22 There have been plans where
23 either -- either the Plan itself had a
24 provision in it that permitted such later

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1 A. There is a whole lot.

2 **Q. Okay. Do any of the rest of**
3 **the asbestos-protected parties, is there**
4 **language in the Plan with respect to any**
5 **of them that so limits the scope of the**
6 **524(g) protection afforded them?**

7 MS. HARDING: Object to
8 form.

9 THE WITNESS: Probably as
10 best I can recall, not. This
11 particular provision was, as it
12 says, for the avoidance of doubt.
13 There were some allegations that
14 were being made by parties in this
15 case on this subject by competing
16 objectors, and it was felt
17 important to make clear exactly
18 what the Plan proponents thought
19 the scope of and insurance
20 protection did or didn't cover.

21 BY MR. BROWN:

22 **Q. Okay. Among the**
23 **asbestos-protected parties are Fresenius**
indemnified parties and the Sealed Air

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1 **indemnified parties, correct?**

2 A. Correct.

3 **Q. And as I read the Plan, they**
4 **have 524(g) protection, and they have 105**
5 **protection?**

6 A. On different injunctions,
7 yes.

8 **Q. Okay. And there is no**
9 **limiting language with respect to the**
10 **scope of the protection afforded either**
11 **of those two entities with respect to**
12 **524(g), is there?**

13 A. That's correct. I might add
14 that the scope of the protection to be
15 afforded those two entities was spelled
16 out in a settlement agreement or two
17 settlement agreements that were approved
18 by the court in -- I don't know -- 2003
19 or thereabouts as part of a settlement of
20 the fraudulent conveyance litigation.

21 And there wasn't a whole lot
22 of options by the time we got to 2008 as
23 to what would or wouldn't be put in the
24 Plan by way of language on those

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1 particular topics.

2 **Q. Can I direct your attention**
3 **now to page 60 of the Joint Plan.**

4 A. Which Section?

5 **Q. 7.1.4 entitled Warrants.**

6 A. That's on page 61 of my
7 Plan. We must have different
8 paginations. But I see it.

9 **Q. What is the footer? Do you**
10 **have a footer?**

11 A. As I say, mine is from the
12 printed version. You are right. The
13 version you gave me that has the K&E
14 footer is it starts at the bottom.

15 **Q. I am working off the file**
16 **version.**

17 A. Okay. So you are working
18 off -- so this is Section 7.2, right?

19 MR. FINCH: No. Warrants,
20 7.1.4.

21 THE WITNESS: Which, in your
22 Plan -- okay. I see. Your
23 Plan -- so we are clear, on what's
24 been marked as ACC Exhibit-5, the

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1 Section 7.1.4 appears beginning in
2 the middle of page 60. In the
3 Plan that I have been using that I
4 described at the beginning is the
5 one that was printed and sent out
6 to everybody is at the top of page
7 61. So there is slight variation.
8 But I see the Section which is
9 7.1.4.

10 BY MR. BROWN:

11 **Q. Okay. The second paragraph**
12 **that starts "If, prior to the issuance."**
13 **Do you see that?**

14 A. Yes.

15 **Q. And it carries over on mine**
16 **over to page 61.**

17 **Can you tell me what the**
18 **purpose of this provision is?**

19 MS. HARDING: Object to
20 form.

21 THE WITNESS: Let me read
22 it. Well, I would characterize
23 this as an antidilution
24 protection.

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1 BY MR. BROWN:

2 **Q. So that if prior to the**
3 **issuance of the warrant, there is**
4 **additional stock issued, you are going to**
5 **adjust the strike price as well as the**
6 **number of warrants; is that right?**

7 A. You are going to make the
8 adjustments described in this section. I
9 am not sure I want to summarize them the
10 way you just did, but this section spells
11 out in somewhat gory detail exactly the
12 type of antidilution provision that's
13 being offered for these warrants.

14 **Q. What if there is dilution**
15 **after the issuance of the warrant? Is**
16 **there any mechanism to deal with that**
17 **situation?**

18 MS. HARDING: Object to
19 form.

20 THE WITNESS: There is a
21 warrant agreement around here
22 somewhere -- I believe it's
23 probably an exhibit to this
24 Plan -- that specifies all of the

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1 A. Yes.

2 **Q. Does the asbestos PI Trust**
3 **assume the duties and obligations of the**
4 **Debtors under asbestos insurance**
5 **policies?**

6 MR. FINCH: Object to form,
7 overly broad.

8 MS. HARDING: Object to
9 form.

10 THE WITNESS: As I
11 understand it, the duties and the
12 obligations of the Debtors under
13 insurance policies are triggered
14 only by the submission of claims
15 by the Debtor or some other
16 insured under the policies.

17 Absent an effort by the
18 insured or successor to get
19 coverage for claims, there are no
20 independent remaining duties and
21 obligations.

22 BY MR. BROWN:

23 **Q. If I can stop you, by**
24 **successor in that sentence, you mean**

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1 rights of the warrant holder.

2 I cannot, sitting here, tell
3 you at the moment that I can
4 recall whether there is a -- it's
5 a one-year warrant, and I just
6 don't remember whether during the
7 one-year exercise period that
8 there is or there is not
9 anti-dilution provisions.

10 BY MR. BROWN:

11 **Q. Okay.**

12 A. But if there are, they will
13 be in the warrant agreement as well as
14 they might be referenced in this section
15 of the Plan.

16 **Q. Let's go to the heading 7.2**
17 **The Asbestos PI Trust.**

18 A. I see it.

19 **Q. Do you see the second full**
20 **paragraph beings "The purpose of the**
21 **Asbestos PI Trust"?**

22 A. I see it.

23 **Q. And it lists a few items**
24 **there.**

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1 **Asbestos PI Trust?**

2 A. PI Trust.

3 **Q. Fair enough.**

4 A. When the Trust is assigned
5 rights under the policies and the Debtors
6 are given the right to assert any and all
7 coverage defenses --

8 MR. FINCH: You mean
9 insurers?

10 THE WITNESS: I am sorry.
11 Let me start over again.

12 When the Trust is assigned
13 rights under the policies and the
14 insurers are retaining all of
15 their coverage defenses with the
16 two exceptions we discussed
17 earlier, if the Trust proposes to
18 demand in some way or another
19 coverage from one or more insurers
20 under those policies, then
21 whatever the insurer asserts as a
22 pre-condition to coverage, what
23 you would call an obligation or a
24 right, would have to be fulfilled

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1 to the extent that a coverage
2 court determines that there is a
3 pre-condition to coverage.

4 And since the Trust is the
5 one seeking the coverage, by
6 hypothesis, it's the only one that
7 has any incentive to make sure
8 that the rights or -- excuse me --
9 that the obligations, the
10 pre-conditions are satisfied as
11 required by a coverage court.

12 And so to that extent, yes,
13 the Trust, one way or another, to
14 the extent determined by a
15 coverage court or by negotiations
16 with insurers, will have to
17 perform what you have described as
18 the obligations and rights under
19 the assigned insurance coverage.

20 That's my understanding.

21 BY MR. BROWN:

22 **Q. Do the Debtors, the**
23 **Reorganized Debtors, retain any duties or**
24 **obligations under the asbestos insurance**

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1 **beginning of your answer are set forth in**
2 **the cooperation agreement; is that what**
3 **you were referring to?**

4 A. They are set forth there.

5 There may be -- I don't remember whether
6 they are also set forth in other
7 documents, such as the Insurance Transfer
8 Agreement and/or the Plan itself. But
9 they are set forth -- I think there may
10 be some set forth in the Insurance
11 Transfer Agreement. I am not sure. I
12 would have to look at them.

13 **Q. Okay.**

14 A. But I do remember that there
15 are cooperation arrangements.

16 **Q. If I understand your answer,**
17 **the cooperation obligation of the**
18 **Reorganized Debtors post-confirmation is**
19 **not the asbestos insurance companies but**
20 **rather to the Trust under the cooperation**
21 **agreement?**

22 A. That's correct.

23 MS. HARDING: Object to
24 form.

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1 **policies if this Plan is confirmed?**

2 A. There are provisions
3 involving cooperation in the Plan
4 documents which would allow the Trust to
5 require, to the extent those cooperation
6 provisions say so, the Debtors to help
7 satisfy or wholly satisfy whatever the
8 particular requirement might be that only
9 the Debtor could do.

10 So there is, I guess, the
11 answer is there is an indirect obligation
12 on the Debtor's part. But the Debtor,
13 qua-Debtor, vis-a-vie, the insurer, since
14 the Debtor under the asbestos insurance
15 rights will not on its own be seeking
16 coverage, the Debtor sort of independent
17 of the Trust would not have any rights,
18 any obligations to the insureds except to
19 the extent, as I say, that the
20 cooperation with the Trust efforts to
21 access that insurance trigger such
22 cooperation obligations.

23 **Q. And the cooperation**
24 **obligations that you described in the**

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1 THE WITNESS: But the
2 asbestos insurance companies,
3 through the retention of asbestos
4 coverage defenses, are the
5 indirect beneficiaries of that
6 provision.

7 BY MR. BROWN:

8 **Q. How so?**

9 A. Because if they don't -- if
10 the Trust can't get Grace to perform the
11 cooperation that the policies require,
12 the insurance companies won't have to
13 provide the coverage if the coverage
14 court says such cooperation is mandatory.

15 There is nothing in the Plan
16 that says that an insurance company -- if
17 policy obligations are not performed as
18 required by the policy by somebody,
19 nevertheless they have to pay on the
20 insurance. The only entity or person
21 that could make such a determination
22 would be a coverage court judge and only
23 in the context of deciding that for
24 whatever reason the particular obligation

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1 provision, essentially that we are
2 going to transfer the assets to
3 the Trust and if you got a claim
4 or an interest in the assets, then
5 you can litigate that claim
6 against the Trust.

7 But we are going, I guess,
8 have potential confirmation
9 objections about whether there are
10 any such claims. I mean, the mere
11 assertion of a claim doesn't mean
12 that it's valid.

13 BY MR. BROWN:

14 **Q. Okay. If I can direct your**
15 **attention down to 7.2.4, which is**
16 **entitled Assignment and Enforcement of**
17 **Asbestos PI Trust Causes of Action.**

18 A. Yes.

19 **Q. I must confess, I am a bit**
20 **baffled by this one, so I need some help**
21 **with it.**

22 **How do Asbestos PI Trust**
23 **causes of action differ from asbestos**
24 **insurance rights?**

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1 Asbestos PI Trust claim against the
2 Trust, the Trust could assert Grace's
3 contribution rights as a counterclaim to
4 that. That's two categories of things
5 that this is intended to include.

6 **Q. Okay. Let's go to page 64,**
7 **7.2.6, Creation and Termination of the**
8 **Asbestos PI TAC.**

9 A. Correct.

10 **Q. It says, "On or before the**
11 **Confirmation Date, the initial members of**
12 **the Asbestos PI TAC shall be selected by**
13 **the Asbestos PI Committee."**

14 **That has already occurred,**
15 **correct?**

16 A. Correct. They are
17 identified in the Asbestos PI Trust
18 Agreement.

19 **Q. Okay. How many actual**
20 **committee members are there on the**
21 **Asbestos PI Committee?**

22 A. I don't remember. But we
23 have the Disclosure Statement here. I
24 could pretty quickly find out by just

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1 A. Well, I have to go back and
2 look at the definitions to answer that
3 question.

4 Well, I think asbestos PI
5 Trust causes of action does include
6 asbestos insurance rights.

7 **Q. What else does it include?**

8 A. Well, if you look at the
9 definition, it includes defenses such
10 that, for example, if a claimant says, I
11 have a valid claim against Grace that's
12 channelled to the Trust and the Trust
13 disagrees with it, the Trust retains all
14 the defenses to that claim that Grace
15 would have had. That's clause A under
16 definition 47.

17 **Q. Okay.**

18 A. Clause B is, for example,
19 contribution rights, et cetera. So, for
20 example, if the Trust has -- if Grace has
21 contribution rights that it has not
22 asserted and that which are still valid
23 against a codefendant in a tort system
24 and the codefendant brings in indirect

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1 looking at it where they are identified.

2 **Q. Okay.**

3 A. It's certainly more than the
4 four that are going to be on the TAC.

5 **Q. Okay. Is it fair to say**
6 **that the actual committee members who are**
7 **asbestos claimants act through their tort**
8 **counsel in connection with their**
9 **obligations as committee members?**

10 A. As a general proposition,
11 that's true. In any given committee on
12 any given issue, an individual member
13 might choose to show up and act on their
14 own behalf, and there have been some
15 examples in the past where that has
16 occurred.

17 But, as a general
18 proposition, the committee members are
19 blue-collar folks of limited legal
20 knowledge, and they delegate to their
21 personal injury lawyers their sort of
22 activities acting for them as an agent on
23 these committees.

24 **Q. Okay. You are counsel to**

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1 the Asbestos PI Committee. You don't
2 have occasion, do you, to deal directly
3 with the actual claimants?

4 MR. FINCH: Object to the
5 form.

6 THE WITNESS: That's not
7 entirely true. I get calls
8 periodically that I just got this
9 incomprehensible Disclosure
10 Statement from Grace and could you
11 please tell me what it means or
12 something. But as a general
13 proposition --

14 MR. FINCH: Transfer to it
15 to Finch.

16 THE WITNESS: Or where do I
17 file my proof of claim.

18 But, as a general
19 proposition, I don't nor do other
20 folks at Caplin & Drysdale deal
21 directly with original committee
22 members.

23 BY MR. BROWN:

Q. You deal with personal

1 committee?

2 A. Yes.

3 Q. And do those committee
4 members for those firms act through those
5 four gentlemen?

6 A. On the committee?

7 Q. Yes.

8 A. Generally, yes.

9 Q. Okay. So is it fair to say
10 that Mr. Rice, Mr. Weitz, Mr. Cooney, and
11 Mr. Budd selected themselves to be
12 members of the TAC?

13 A. No, because there are many
14 other members of the committee, and the
15 committee as a whole, which, in this
16 particular case, I believe has a majority
17 of members that are not these four
18 gentlemen, decided which of their members
19 they thought would be appropriate persons
20 to put on the TAC.

21 Q. And how was that decided?

22 A. As far as I know, they had
23 informal discussions, and they had a
24 committee meeting. I don't remember

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1 injury attorneys, correct?

2 A. As a general proposition, we
3 deal with the PI lawyers who have been
4 appointed by their client committee
5 member to act on their behest in the
6 committee.

7 Q. Now, the TAC members are
8 John Cooney, Perry Weitz, Joe Rice,
9 and -- who was the fourth one?

10 A. Well, I can tell you by
11 looking at the PI Trust Agreement, which
12 is Exhibit-2 to the Plan and looking at
13 the signature page, we should have, which
14 is --

15 Q. Russell Budd.

16 A. Russell Budd, John Cooney,
17 Joseph Rice, and Perry Weitz.

18 Q. And each of them works for a
19 law firm, correct?

20 A. Each of them is a partner a
21 law firm, yes.

22 Q. Sorry. I didn't mean to...

23 Now, does each of those law
24 firms have a client that sits on the

1 whether there were votes or anything like
2 that. But at the end of the day, through
3 some sort of nomination or informal
4 self-nomination or self-nomination,
5 speeches, lobbying, discussions, what
6 have you, there came a time at which the
7 committee voted to select these four
8 people.

9 Q. Okay.

10 A. And I might add that the
11 Future Claimants Representative had a
12 sort of a generalized oversight in the
13 sense that while the Plan contemplates
14 that the committee would nominate the
15 TAC. If the FCR thought, for some reason
16 or another, that somebody had been put on
17 the TAC that was a real bad idea, the
18 committee would probably have had to
19 listen to the Future Representative's
20 views on that even though the Futures Rep
21 did not have sort of a formal veto or
22 role in that process.

23 Q. Okay. I want to now turn to
24 page -- well, it's 69 on my version,

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Section 7.7, Conditions to Occurrence of the Confirmation Date, and I want to focus your attention first on (g).

A. I see it.

Q. What are the securities that are funding the Asbestos PI Trust?

A. The warrant and the Deferred Payment Agreement, which is a debt obligation, which also includes, I believe, a promissory note or promissory notes.

Q. Can you describe for me the circumstances under which the asbestos PI claim -- excuse me -- the Asbestos PI Trust will be funded with dividends?

A. In the event that it exercises the warrant and acquires stock pursuant to that exercise and the stock pays dividends, it will get dividends.

Q. And if the warrant is not exercised?

A. Then it won't get dividends.

Q. What about if there is a default under the deferred payment note?

and the tort system, et cetera, you would have a first-come-first-serve operation where there was the distinct possibility that, as it happened in the Manville Trust at the very beginning, all the money would run out the door at the front end, and there wouldn't be anything left for future claimants, which would violate 524(g).

BY MR. BROWN:

Q. Okay. Well, the way that this provision is written suggests that any procedures other than those that are set forth in this Plan would defeat the purposes of Section 524(g).

Is that what is intended here?

MR. FINCH: Object to form.

MS. HARDING: Object to

form.

BY MR. BROWN:

Q. Are there other options, is

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A. My recollection is that the Trust has the right to get 50.1 percent of the stock of the Debtor under those circumstances.

But, again, the terms of -- that's a very complicated set of documents, and the precise terms of that are whatever the document states. I can only give you a sort of a very generalized description.

Q. Okay. Let me draw your attention now down to (I), condition (I).

A. Yes, I see it.

Q. What does that mean?

MS. HARDING: Object to form.

THE WITNESS: Well, what it means is that if you didn't have a TDP, which includes things like a payment percentage and mechanisms for trying to limit the ways in which the Trust expends monies on claims, and you just had sort of a come in, sue the Trust

the question?

A. If the question is could one hypothesize a somewhat different set of TDPs that had somewhat different procedures, the answer is depending on what that different TDP set of procedures was, you might be able to say the same thing about it.

The purpose of this thing is to say that this structure, according to the court, satisfies the requirements of 524(g) that say that you have to establish this requirement.

I mean, this is a finding of fact that is intended to have the court rule that the Plan does, in fact, meet the requirements of a subsection of 524(g).

Q. You could, in fact, have a Plan that met the qualifications for 524(g) that actually had a role for asbestos insurance entities, correct?

MR. FINCH: Object to form.

MS. HARDING: Object to

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1 form.

2 THE WITNESS:

3 Hypothetically, probably yes. It
4 would be more difficult, but,
5 hypothetically, yes. You could
6 have -- we have had some plans
7 that had coverage in place
8 agreements with insurers, for
9 example, that we felt satisfied
10 524(g). But you have to get the
11 insurers' agreement to have a
12 coverage in place agreement.

13 BY MR. BROWN:

14 Q. Okay. Let's go now to
15 condition (r) -- I am sorry. Condition
16 (s).

17 A. Yes.

18 Q. Now, for purposes of my
19 question, I want you to assume that when
20 I use the term "settled asbestos
21 insurance companies," I want you to
22 assume that those that are pre-petition.

23 A. Okay.

24 Q. And my question is a very

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1 because we think they are nice folks.

2 Q. I didn't think so.

3 A. Settled asbestos insurers,
4 by definition, are insurers that have
5 indemnity rights against Grace.

6 Q. They have also paid a lot of
7 money?

8 A. And they paid a lot of money
9 in the past. But the past money -- money
10 is fungible. The past money went into
11 Grace's coffers, went out or didn't go
12 out, et cetera. But they are not being
13 asked for any new money.

14 But Grace has an economic
15 interest in not having asbestos PI claims
16 brought against those insurers that could
17 then trigger an indemnity obligation of
18 Grace to the insurer against which that
19 asbestos PI claim was asserted. They
20 have an economic interest in preventing
21 that.

22 So the deal is channel any
23 such claim that might give rise to the
24 asbestos indemnity claim to the Trust,

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1 general one, because I have heard
2 different views, and that is, what
3 benefits are being provided by or on
4 behalf of settled asbestos insurance
5 companies listed on Exhibit-5?

6 A. It is the position of the
7 ACC that Grace is paying close to
8 \$3 billion of value to the Trust on
9 behalf of not only itself but a variety
10 of other protected parties, including
11 Non-Debtor affiliates and, in this
12 particular case, settled asbestos
13 insurers.

14 And it is doing so on behalf
15 of settled asbestos insurers because
16 those insurers have indemnity claims
17 against Grace, which are being, if they
18 hypothetically could ever occur, are
19 being channelled to the Trust as a means
20 of protecting Grace against such -- well,
let me back up.

22 The purpose of putting
23 settled asbestos insurers in here is not
24 to provide a gratuitous asbestos insurers

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1 and in exchange for that, part of what
2 Grace is paying you is to get rid of
3 asbestos PI claims which include indirect
4 asbestos PI claims for indemnity or
5 direct asbestos PI claims for indemnity.

6 Q. Okay.

7 A. And that's the basis.

8 Q. I think you said at the very
9 beginning of either the last question or
10 the one before that Grace was
11 contributing 3 million?

12 A. Billion.

13 Q. That's what I thought.
14 Okay. I just wanted to make sure I had
15 the number correct.

16 A. I mean, that's our view of
17 the approximate amount of what they were
18 contributing at the time we made the
19 deal, I guess would be a better way to
20 put it. There are other people that
21 might value it differently.

22 Some of things that were
23 worth more at the time the deal was made
24 are worth less today but hopefully will

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1 agreement itself as being the
2 definitive answer to your
3 question.

4 BY MR. BROWN:

5 **Q. And to the extent that it's**
6 **contained in the Fresenius agreement --**

7 A. Correct.

8 **Q. -- that indemnity obligation**
9 **only arises in the event that the Plan is**
10 **confirmed, correct?**

11 A. I believe that's correct,
12 because I believe that the Fresenius
13 agreement itself is contingent on
14 confirmation to the Plan. And,
15 therefore, if the Plan isn't confirmed,
16 then I think the Fresenius agreement
17 becomes ineffective or invalidated or
18 terminates, or whatever word you want to
19 use.

20 **Q. Okay. Now, what about to**
21 **the extent that OneBeacon or Seaton or,**
22 **for that matter, any other settled**
23 **insurer had a claim that was not arising**
24 **out of an asbestos personal injury**

1 *****

2 CONFIDENTIAL PORTION OF TRANSCRIPT ENDS

3 *****

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1 claim --

2 MR. KRAMER: I am going to
3 object for the record because
4 these questions really don't
5 relate to this document, so we
6 either should unseal the record
7 and call Mr. Speights now or if
8 you can simply ask your questions
9 related to this document and then
10 you can unseal the record.

11 Matt Kramer for the Property
12 Damage Committee.

13 MR. BROWN: I am happy to do
14 that. That's fine.

15 THE WITNESS: It seems to me
16 that there is nothing confidential
17 that we are talking about. I
18 mean, if we are not talking about
19 the terms of the settlement --

20 MR. BROWN: That's fine.
21 That's fair enough.

22 MR. KRAMER: Since I made
23 the objection, I will be happy to
24 call Mr. Speights.

1 (Mr. Speights re-joined.)

2 BY MR. BROWN:

3 **Q. All right. There was a**
4 **question pending, but let me see if I can**
5 **rephrase it.**

6 **To the extent that a settled**
7 **asbestos insurance company has a**
8 **contractual indemnity claim under a**
9 **settlement agreement against Fresenius or**
10 **Sealed Air that is not related to an**
11 **underlying asbestos personal injury**
12 **claim, is that type of claim enjoined**
13 **under the Plan?**

14 A. Well, it's not enjoined by
15 the asbestos permanent channelling
16 injunction.

17 **Q. Asbestos PI channelling**
18 **injunction?**

19 A. PI channelling injunction.
20 Whether it's enjoined by some other
21 injunction, I can't think of offhand.

22 **Q. What about the successor**
23 **claims injunction?**

24 A. I am going to have to look

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1 at that injunction.

2 I can't recall ever having
3 spent a lot of time thinking about that
4 issue before, but it seems possible that
5 that hypothetical claim could be enjoined
6 by the successor claims injunction in
7 Section 8.5 of the Plan as against
8 Fresenius and Sealed Air.

9 **Q. I want to turn your**
10 **attention now to Section 7.15. We have**
11 **talked about it a little bit already,**
12 **Insurance Neutrality.**

13 A. I have it.

14 **Q. Okay. Other than the**
15 **conditions set forth in (g) under 7.15,**
16 **are asbestos insurance entities bound by**
17 **any other findings or conclusions**
18 **contained in the Plan?**

19 A. Yes, potentially under
20 Section 7.15(j).

21 **Q. Okay. Anything else?**

22 A. Well, yes, two other
23 categories of things. One would be
24 rulings on compliance with the bankruptcy

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1 form.

2 THE WITNESS: Let me turn to
3 Section 11.9. I don't think so,
4 because I think the exculpation
5 provision comes under the heading
6 bankruptcy issues.

7 The exculpation provision is
8 pretty limited. What it applies
9 to are acts or omissions in
10 connection with or arising out of
11 the Chapter 11 cases. And my
12 understanding of what is intended
13 to be covered by that is some
14 claim that one of the parties
15 covered by it engaged in some sort
16 of misconduct during the course of
17 the bankruptcy case -- I don't
18 know -- a claim, to put it
19 personally, the Asbestos Claimants
20 Committee somehow or another
21 breached a fiduciary duty to its
22 constituency by proposing a Plan
23 that this exculpation provision
24 would apply to that sort of a

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1 code provisions, which are not under the
2 definition of asbestos coverage defenses
3 preserved, as we had discussed earlier.

4 **Q. Okay.**

5 A. And, secondly, there is a
6 race judicata provision in Section
7 7.15(e) that, in effect, says that if an
8 asbestos insurer actually litigates some
9 claim in the bankruptcy case, it could
10 be -- assuming that otherwise
11 non-bankruptcy principles of race
12 judicata or collateral estoppel would
13 apply, it could be bound by the outcome
14 of any such litigation that it initiated.

15 **Q. Okay.**

16 A. Other than that, I believe
17 the answer to your question, those are
18 the only conditions that I am aware of.

19 **Q. Okay. Would it be correct**
20 **to say that this provision overrides the**
21 **exculpation provision in the Plan which**
22 **appears at Section 11.9?**

23 MR. FINCH: Object to form.

24 MS. HARDING: Object to

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1 claim or a similar claim against
2 the Debtors.

3 But those types of claims
4 are not insurance coverage claims
5 or defenses. They would just be
6 some sort of -- and, indeed, it's
7 almost inconceivable to me how an
8 insurance company could ever have
9 the sort of claim that would be
10 exculpated by Section 11.9,
11 frankly.

12 BY MR. BROWN:

13 **Q. Well, if they did --**

14 MR. FINCH: Object to the
15 form.

16 BY MR. BROWN:

17 **Q. -- would the exculpation**
18 **provision take precedence over Section**
19 **7.15?**

20 MR. FINCH: Object to form.

21 MS. HARDING: Object to
22 form.

23 THE WITNESS: That question
24 is almost impossible to answer,

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1 because without knowing what the
2 claim is -- I mean, 7.15 addresses
3 specific types of situations
4 having to do with insurance.

5 11.9 addresses claims that,
6 on their face, have no apparent
7 relationship to insurance, and,
8 therefore, to know whether there
9 is any overlap between the two to
10 determine which one would prevail
11 in the event that there was an
12 overlap, you would have to have
13 some idea what kind of claim you
14 are talking about. And, frankly,
15 I have no idea what kind of claim
16 you want me to hypothesize for
17 purposes of that question.

18 BY MR. BROWN:

19 **Q. All right. There are some**
20 **releases that are mentioned in Section**
21 **7.15, and I want you to put those aside**
22 **for a moment.**

23 **Other than the releases that**
24 **are cited in 7.15, are any other releases**

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1 people. There are some specific
2 releases that we have talked about
3 already.

4 Without knowing what sort of
5 a claim you believe the Plan
6 releases and being able to figure
7 out whether that claim ties into
8 the sort of relationships that
9 7.15 -- policy type relationships
10 that 7.15 is intended to address,
11 I really can't answer. I am not
12 trying to evade the question. I
13 just can't answer it for the
14 reasons I stated.

15 MR. BROWN: Okay.

16 (ACC 30(b)(6)-8 and 9 marked
17 for identification at this time.)

18 BY MR. BROWN:

19 **Q. All right. Mr. Lockwood,**
20 **you have before you two documents, ACC-8**
21 **and ACC-9. Let's start with 8.**

22 A. I have it.

23 **Q. Have you ever seen that**
24 **document before?**

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1 **that appear in the Plan or Plan documents**
2 **binding on asbestos insurance entities?**

3 MS. HARDING: Object to
4 form.

5 THE WITNESS: I would have
6 to give you a very similar answer
7 to the one I just gave you on
8 exculpation because I would have
9 to know what kind of claims you
10 are talking about.

11 7.15 is intended to deal
12 with insurance policy/settlement,
13 insurance settlement, insurance
14 reimbursement situations, and
15 preservation of insurer rights
16 with respect to those types of
17 agreements. Releases in the Plan
18 may or may not cover those
19 situations.

20 As a general proposition, I
21 don't think the Plan purports to
22 release claims by asbestos
23 insurers sort of generically
24 against a whole lot of different

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1 A. Yes.

2 **Q. What is it?**

3 A. It is a complaint by The
4 Scotts Company attempting to initiate an
5 adversary proceeding in the Grace
6 bankruptcy case against various insurers
7 and Grace.

8 **Q. Okay. And is the relief**
9 **that is sought by Scotts in this**
10 **adversary complaint as against the**
11 **insurers that are defendants, who are**
12 **also settled asbestos insurance**
13 **companies, enjoined in its totality?**

14 A. As of right now or under the
15 Plan?

16 **Q. Under the Plan.**

17 A. I want to say yes to that,
18 but I would have to say this: I believe
19 that Scotts is asserting claims in this
20 action as asserted additional insured
21 under vendor coverage in W.R. Grace
22 insurance policies, point one.

23 I believe the basis is suits
24 against Scotts for Scotts' liability for

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1 products that contain vermiculite that it
2 obtained from Grace.

3 To the extent, therefore,
4 that the claims sought to be asserted
5 against the insurers for coverage for
6 those claims that I just described are
7 the ones that are the subject matter,
8 they are enjoined under the Plan because
9 they are asbestos personal injury claims
10 -- and you can walk through them --
11 Asbestos PI Trust claims, channel
12 asbestos Trust. You can walk through the
13 definitions, and they are ultimately
14 claims that are channelled to the Trust.

15 If there is some other kind
16 of claim for which they are seeking
17 insurance coverage -- and I can't quite
18 imagine what it is, because I am not
19 aware that they are alleged vendor of any
20 products of Grace don't contain
21 vermiculite and create an
22 asbestos-related injury alleged from
23 vermiculite, then they wouldn't be
enjoined. But I don't think there are

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1 manufactured, distributed, et
2 cetera, by Grace. Those are the
3 two requirements, and as far as I
4 can recall, the only two
5 requirements.

6 BY MR. BROWN:

7 **Q. Can you look at what's been**
8 **marked as ACC-9?**

9 A. I am looking at it.

10 **Q. You have seen this document**
11 **before?**

12 A. Yes, I saw it in a courtroom
13 in the not-too-distant past.

14 **Q. And you would recall when**
15 **you saw it in the courtroom, that**
16 **Mr. Bernick drew a line on this diagram.**

17 **Do you recall where he drew**
18 **a line?**

19 A. No.

20 **Q. I will refresh your**
21 **recollection. It was from the block that**
22 **says "Scotts" directly into the block**
23 **that says "Asbestos PI Trust."**

24 A. Okay. I can imagine why he

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1 any such claims. I never heard of them.
2 So that's the caveat.

3 **Q. If the underlying claim or**
4 **an underlying claim against Scotts**
5 **alleges that Scotts itself was negligent**
6 **and Scotts is held liable in that case**
7 **for its own negligence and perhaps for**
8 **the negligence of Grace and then seeks**
9 **coverage against the settled asbestos**
10 **insurers under the vendor endorsements,**
11 **are all of those claims enjoined by the**
12 **asbestos PI channelling injunction?**

13 MS. HARDING: Object to the
14 form.

15 THE WITNESS: The only
16 claims that are enjoined by the
17 asbestos PI channelling injunction
18 are claims against settled
19 insurers that meet two
20 qualifications: One, they are
21 indemnified by Grace, the claim
22 against the insurer; and, two,
23 they are based on exposure to an
24 asbestos-containing product

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1 would have drawn that line.

2 **Q. And he was indicating by**
3 **that line, as I understood it, that claim**
4 **4 on this diagram, claim 5, and claim 6**
5 **are nonexistent.**

6 **Is that your understanding?**

7 A. Of what he was doing or what
8 the facts are?

9 **Q. Yes. Of what he was doing?**

10 MR. FINCH: Object to form.

11 MS. HARDING: Objection to
12 form.

13 THE WITNESS: If you drew a
14 line from the box called "Scotts"
15 to the Trust, that would be what
16 one was doing.

17 BY MR. BROWN:

18 **Q. Okay. And do you agree with**
19 **that?**

20 A. To the extent stated in the
21 answers to the previous questions, i.e.
22 that if -- the box at the top that gives
23 rise to the claims against Scotts says
24 "asbestos claimants." If those asbestos

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1 cumulative iteration process, have
2 had that sort of a role.
3 Obviously, that's not the kind of
4 role you have in mind. The kind
5 of role you have in mind is coming
6 to you and saying we want to
7 negotiate about it, we want to get
8 your agreement to it, we want to
9 get your approval of it. And that
10 sort of a role, to my knowledge,
11 you didn't have on this TDP.

12 BY MR. BROWN:

13 **Q. All right. Under this TDP,**
14 **is there any role for any asbestos**
15 **insurance entity --**

16 A. In --

17 **Q. Well, I hadn't finished.**

18 A. Sorry.

19 **Q. -- in connection with any of**
20 **the claims resolution processes?**

21 A. Well, you yourself
22 identified one a few questions back,
23 which is if the claimant doesn't settle
its claim with the Trust, brings the

1 was to allow insurers to handle the
2 claims, they would have to right under
3 this document and the Trust Agreement
4 with the consent of the TAC and the FCR
5 to amend it to give the insurers a right.
6 But, in its present form, there is no
7 express provision involving the insurers
8 in the claims resolution process.

9 **Q. And that's true for the**
10 **expedited review, individual review, and**
11 **arbitration, correct?**

12 A. It's certainly true of the
13 expedited review and individual review.
14 It's an interesting question whether or
15 not the Trust could tender a claim for
16 arbitration to an insurer. I don't know
17 whether there is anything that would
18 prohibit them from doing that.

19 Arbitration is, to some
20 extent, like litigation, and they could
21 certainly tender a claim for an insurer,
22 a litigation claim to an insurer. They
23 might be able to. I don't know of
24 anything that would preclude them, I

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1 claim against the Trust in the tort
2 system, and the Trust has to defend it.
3 It is certainly within the contemplation
4 of these documents that the Trust could
5 tender that defense in that claim to an
6 insurer.

7 **Q. Okay.**

8 A. And that would be where the
9 Trust -- while it doesn't spell that out
10 in here, that would certainly be a place
11 where an insurer might have an
12 involvement.

13 Beyond that, there is
14 nothing in the Trust that expressly
15 addresses any participation by insurers
16 in the claims resolution process.

17 That said, if some coverage
18 court decides that the insurers have the
19 right to participate in the claims
20 resolution process, the TDP has amendment
21 procedures in it, and the trustees might
22 very well conclude that if the only way
23 they could get access in the future to a
24 lot of valuable assigned insurance rights

1 guess, from tendering it to an insurer
2 for arbitration. I don't know.

3 **Q. But the TDP doesn't spell**
4 **out any role?**

5 A. The TDP doesn't spell it
6 out, no.

7 **Q. Let's go to Section 2.6.**

8 A. Of which document?

9 **Q. Trust Distribution**
10 **Procedures, ACC-11.**

11 A. Okay.

12 **Q. Now, the first question I**
13 **have, that refers to indirect PI Trust**
14 **claims?**

15 A. Correct.

16 **Q. There is in Section 5.12 and**
17 **5.13 a couple of other terms that are**
18 **used. In 5.12, the term "insurer-related**
19 **TDP claims" is used.**

20 A. Correct.

21 **Q. In 5.13, the term**
22 **"indemnified insurer TDP claims" is used.**

23 **And my first question is**
24 **whether those two terms are included**

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1 within the term "indirect PI Trust
2 claim"?

3 A. Well, that's, again, almost
4 a metaphysical debate, because --
5 actually, if you really parse the
6 definitions in the Plan, I remember
7 concluding that there was probably a
8 better argument that the claims that are
9 identified in 5.12 and 5.13 were direct
10 PI Trust claims and not indirect PI Trust
11 claims.

12 But we decided, rather than
13 to have to get into parsing things --
14 this is a classic example, these two
15 provisions of how you change TDP
16 provisions when insurers raise objections
17 that you think are meritorious in some
18 way or another. We decided to just have
19 these specific provisions deal with
20 claims that are being channelled to the
21 Trust, whether they are direct claims or
22 indirect claims, being sort of not a
23 matter of great moment. They are one or
the other or both. And so they are dealt

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1 with in these two specific provisions --

2 MR. FINCH: Which two are
3 you referring to?

4 THE WITNESS: 5.12 and 5.13.

5 -- to make sure that

6 everybody knew exactly how they
7 were going to be dealt with.

8 BY MR. BROWN:

9 Q. So is your answer that the
10 terms "insurer-related TDP claims" and
11 "indemnified insurer TDP claims" might be
12 direct Trust claims or, on the other
13 hand, might be indirect Trust claims?

14 A. My own personal opinion is
15 that they are direct PI Trust claims, if
16 you go back to the Plan and look at the
17 definitions.

18 Q. Is that the ACC's position
19 or your personal position or both?

20 A. Well, I mean, I am the ACC
21 representative, and I was the one who was
22 most involved in drafting the Plan, so I
23 guess it's the ACC's perspective.

24 I personally don't see

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1 frankly at the end of the day that it
2 matters whether they are direct or
3 indirect claims, and that's why we didn't
4 attempt to change the definition.
5 Remember, these two provisions are new.

6 Q. I know.

7 A. They were drafted long after
8 the definitions of direct and indirect PI
9 Trust claims were put in both the Plan
10 and in this TDP.

11 And so the question is, was
12 there any utility having agreed to put
13 these provisions in to deal with these
14 particular kinds of claims to going back
15 and trying to sort of re-write the
16 definitions of direct claims and indirect
17 claims to put them in one basket or the
18 other, and we couldn't see that it
19 mattered.

20 But if you, through your
21 probing cross-examination, convince me
22 that it does matter, then maybe we will
23 have to go and fix it.

24 Q. Well, we are using the term

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1 "direct PI Trust claim," and I am not
2 sure there is such a term.

3 A. Well, there may not be. I
4 don't think there is an indirect PI Trust
5 claim, and I don't remember what -- there
6 is some term that we used for the claims
7 that are going in here somewhere, I would
8 assume.

9 Q. Well, you have asbestos PI
10 claims.

11 A. Well, maybe that's the term.
12 Yeah, it's asbestos PI claims.

13 Q. So the ACC --

14 A. It's on page 1, unnumbered
15 page 1, second line. It says,
16 "...provide for resolving all 'Asbestos
17 PI Claims' as defined in the First
18 Amended Joint Plan of Reorganization," et
19 cetera.

20 Q. I am sorry. What document
21 are you in?

22 A. TDP, page 1, second line on
23 the page. There is the reference to
24 asbestos PI claims in quotes as defined

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1 in the First Amended Plan. That's the
2 generic term. And indirect PI Trust
3 claim is simply a subset of that. And I
4 don't think it's an indirect PI Trust
5 claim. I think it's an asbestos PI claim
6 which, of course, happens to include in
7 its definition indirect PI Trust claims.

8 (There was an interruption
9 at this time.)

10 BY MR. BROWN:

11 **Q. Just to circle out this line**
12 **of questioning, there is a Section in**
13 **5.6.**

14 A. Of the TDP?

15 **Q. Of the TDP.**

16 A. That's the section that
17 deals with PI claims.

18 **Q. So based on your answers**
19 **that you just gave, I presume that the**
20 **ACC's position is that 5.6 has no**
21 **application to insurer-related TDP claims**
22 **or indemnify insurer TDP claims?**

23 A. Correct.

MS. HARDING: I think I

1 Section 5.6 of the TDP.

2 BY MR. BROWN:

3 **Q. If I can direct your**
4 **attention now to Section 4.3 of the TDP.**

5 A. I have it.

6 **Q. Let's see. The third full**
7 **paragraph begins "There is uncertainty."**
8 **I direct your attention to the second**
9 **sentence there.**

10 A. Yes.

11 **Q. If federal or state law were**
12 **to impose greater restrictions or limits**
13 **on the asbestos PI claimants to recover**
14 **in the tort system, is there a mechanism**
15 **under the Trust Agreement or the Trust**
16 **Distribution Procedures to incorporate**
17 **such restrictions or limits into the TDP?**

18 A. Yes, you could amend them.

19 **Q. Okay. And does that**
20 **amendment require the consent of the**
21 **Trust Advisory Committee?**

22 A. Subject to the ability to go
23 to court if the trustees disagree with
24 the TAC's refusal to give such consent,

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1 wanted to object to form before
2 you answered, but that's all
3 right.

4 BY MR. BROWN:

5 **Q. Okay. Let's go to page --**

6 MS. HARDING: Could you
7 repeat the question, please?

8 (The reporter read from the
9 record as requested.)

10 MS. HARDING: Object to
11 form. I think it's very
12 confusing.

13 THE WITNESS: To make it
14 clear, the way in which the term
15 of the so-called insurance related
16 TDP claims are treated under the
17 TDP is set forth in Section 5.12
18 of the TDP and not in Section 5.6
19 of the TDP.

20 Similarly, the way in which
21 indemnified insurer TDP claims is
22 defined in the TDP, are treated
23 under the TDP is contained in
24 Section 5.13 of the TDP and not in

1 yes.

2 **Q. Okay.**

3 A. I would also observe,
4 however, that to some extent, changes in
5 federal or state law could show up
6 without amendments to the TDP. Because
7 in individual review, arbitration and
8 claims that go through to the tort
9 system, the trustees can apply applicable
10 state or federal law principles that
11 govern those claims.

12 The only claims for which
13 there are specified criteria, which might
14 or might not -- strike -- which might
15 become superseded at some level by some
16 hypothetical state or federal law would
17 be the expedited review provisions. They
18 are the ones that are written down.

19 Everything else is you have
20 a claim, to the extent that you have a
21 valid claim under state law for
22 individual review, arbitration, and the
23 tort system.

24 So to the extent that you

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1 had such changes, they began to show up
2 in the results of individual review,
3 arbitration, or litigation in the tort
4 system, that could affect the totality of
5 the PI Trust claims to be paid over time,
6 which is what this sentence is talking
7 about.

8 **Q. All right. If you look at**
9 **Section 5.3(a)(3), specifically the**
10 **sentence that begins "thereafter."**

11 MR. FINCH: What page are
12 you on, Mike?

13 MR. BROWN: Mine is page 23.

14 THE WITNESS: 23. I see it.

15 BY MR. BROWN:

16 **Q. Okay. Now, there are some**
17 **limitations imposed by Section 524(g) and**
18 **by the Trust Agreement on the types of**
19 **changes that can be made under the TDP.**

20 **Is that a fair statement?**

21 MR. FINCH: Object to form.

22 THE WITNESS: I am not sure,
23 actually. What sort of
24 limitations do you have in mind?

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1 trustees are obligated to make sure that
2 the Trust continues to comply with
3 524(g). There is no question about that.
4 It's just hard to know what sort of
5 changes you could imagine that would be
6 consistent with their fiduciary duties to
7 the claimants that would jeopardize that.
8 So, yeah, it's a restriction, I guess,
9 but how it would actually ever come into
10 play, I don't know.

11 **Q. There is a reference on page**
12 **28 to foreign claims.**

13 A. Yes.

14 **Q. Which does not include**
15 **claims in U.S. jurisdictions or Canada.**

16 A. Correct.

17 **Q. Are there other claims**
18 **pending out there in other jurisdictions**
19 **right now?**

20 A. Against Grace?

21 **Q. Yes.**

22 A. I am not personally aware of
23 any such claims, but there have been
24 claims brought against other trusts by

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1 BY MR. BROWN:

2 **Q. Looking at the sentence that**
3 **I just directed you to, are there any**
4 **restrictions placed on the trustee in**
5 **terms of how they can change any of these**
6 **items, the disease levels, the scheduled**
7 **values, the medical or exposure criteria,**
8 **et cetera?**

9 A. Well, first, they have
10 fiduciary obligations to the
11 beneficiaries of the Trust which would
12 preclude them from making arbitrary
13 decisions that work to the detriment of
14 claimants. So they have that sort of
15 restriction, but that's sort of general.

16 They have a restriction of
17 sorts in the need to go through the
18 consent process. But at the end of the
19 day, they could do it, as I said earlier,
20 if a judge thought that either the FCR or
the TAC or both were being unreasonable.

22 I suppose, to go back to
23 your earlier question, that one could
24 hypothesize -- at some level, the

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1 non-residents of the United States and
2 Canada. So, therefore, since it's
3 possible, you put in a provision that
4 deals with the possibility that it might
5 occur in this case.

6 I mean, this is sort of a
7 standard provision nowadays in these
8 trusts. I don't think it's responsive to
9 anything particular in the Grace case.
10 But, as I say, I just don't remember any
11 such claims.

12 **Q. All right. Can you turn to**
13 **page 31?**

14 A. I am there.

15 **Q. The paragraph that begins,**
16 **"with respect"?**

17 A. Yes.

18 **Q. About halfway down the**
19 **sentence that begins "The choice of law**
20 **provision..."?**

21 A. Yes.

22 **Q. What is the purpose of this**
23 **provision?**

24 A. Let me refresh my memory on

Page 378

1 terms from the previous plans that I am
2 aware of.

3 **Q. As the ACC's designee to**
4 **take this 30(b)(6) deposition, would you**
5 **be aware if there were such an agreement?**

6 A. I believe I would be, yeah.

7 **Q. What agreements, if any,**
8 **were struck at the time of ACC Exhibit-3**
9 **concerning how Libby claimants' claims**
10 **would be treated?**

11 A. Other than that they would
12 be part of the asbestos claimants whose
13 claims would be channelled to the Trust
14 and whose consideration would be paid out
15 of the assets that were to be contributed
16 to the asbestos Trust under the Term
17 Sheet, there were no agreements that I am
18 aware of.

19 **Q. Were there any agreements**
20 **concerning who would bear responsibility**
21 **for restitution claims, if any, in**
22 **connection with the criminal trial now**
23 **going on in Montana?**

MS. HARDING: Object to

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1 **co-proponents of a Plan to enter into a**
2 **co-proponent agreement governing that**
3 **relationship. Is there any such**
4 **agreement, written or orally?**

5 A. No. Well, you say written
6 or oral. There is certainly no written
7 agreement of that. I mean, the Plan
8 itself -- other than the Plan itself. I
9 mean, when you sign on to a Plan, is the
10 Plan proponent with somebody else is a
11 Plan proponent. That's in a written
12 document, and we have sort of agreed.

13 But if you are talking about
14 some oral agreement that says this binds
15 us outside the Plan or -- I am not sure
16 really what kind of agreement you have in
17 mind. But, as far as I am aware, there
18 isn't any such other than what's
19 reflected in the Plan itself.

20 MR. FINCH: The parties to
21 the Plan also, to the extent there
22 are issues in common, there may
23 well be a common interest
24 privilege for purposes of

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1 form.

2 THE WITNESS: I don't
3 believe there were at that time,
4 no.

5 BY MR. DANIEL COHN:

6 **Q. Have there been any**
7 **agreement on that subject since then?**

8 A. Well, there is provisions in
9 the Plan that speak to that, so yes.

10 **Q. Apart from provisions of the**
11 **Plan, are there any agreements between**
12 **the Asbestos PI Committee and any of the**
13 **other Plan proponents on the subject**
14 **matter of the Plan?**

15 A. The Plan embodies the
16 agreements. There are no side
17 agreements, oral or written, that vary
18 from the Plan that I am aware of. And,
19 indeed, I would be very surprised if I
20 was not aware -- if there were any that I
21 was not aware of.

22 **Q. All right. And one last**
23 **question on this subject. It has been**
24 **known from time to time for the**

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1 discovery and litigation of
2 confirmation objections. But
3 those are not -- I would not
4 regard those as any types of
5 agreements you are questioning
6 about.

7 BY MR. DANIEL COHN:

8 **Q. All right. Directing your**
9 **attention now to ACC Exhibit-11, which is**
10 **the TDP.**

11 A. I have it.

12 **Q. All right. Who drafted the**
13 **TDP?**

14 MR. FINCH: Objection. This
15 gets into Plan negotiations and
16 drafting. I will let you answer
17 that question, but we will see how
18 it goes from there.

19 THE WITNESS: To some
20 extent, Mr. Inselbuch may know
21 more about this than I do. But I
22 have a pretty good knowledge of
23 it.

24 As I have previously

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1 mentioned in this deposition, this
2 TDP in its inception was a sort of
3 mark-up job on one of the previous
4 TDPs from one of the previous
5 bankruptcies that that had been
6 confirmed. I don't recall, as I
7 sit here today, which one it was,
8 but it would have been one of the
9 more recent ones.

10 It then, of course, had to
11 be modified to reflect the
12 particularities of Grace and the
13 claims against Grace and what have
14 you. And you have heard some
15 testimony about things like
16 Sections 5.12 and 5.13. The
17 participants that did it were
18 basically counsel for the ACC,
19 counsel for the FCR, and members
20 of the ACC itself in terms of
21 reviewing and commenting on
22 things, and the FCR himself.

23 The actual, physical
24 drafting as opposed to the

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1 A. I have it.

2 **Q. In the second sentence,**
3 **there is reference to, and I quote,**
4 **"...the intention of paying all claimants**
5 **over time as equivalent a share as**
6 **possible of the value of their claims**
7 **based on historical values for**
8 **substantially similar claims in the tort**
9 **system."**

10 A. Yes.

11 **Q. Now, is that, in fact, the**
12 **intention of the Asbestos PI Committee in**
13 **respect to how the TDP should operate?**

14 A. The intention of the ACC on
15 how the TDP should operate is expressed
16 in all of the terms of the TDP. That
17 particular aspirational sentence that you
18 have plucked from the beginning of the
19 TDP is not is not somehow or another a
20 super-preemptory provision that controls
21 all the other provisions in the Trust
22 that somebody might think either were or
23 were not in agreement with it.

24 **Q. In that phrase that I just**

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1 commenting and what have you was,
2 I believe, done by Caplin &
3 Drysdale.

4 BY MR. DANIEL COHN:

5 **Q. What input, if any, did**
6 **Grace have concerning the TDP?**

7 MS. HARDING: Objection with
8 respect to negotiations.

9 THE WITNESS: Well, it was a
10 general proposition. Grace was
11 furnished copies of drafts and
12 afforded the opportunity to
13 comment on them.

14 BY MR. DANIEL COHN:

15 **Q. And were any changes made to**
16 **what sounds like an ACC FCR draft at the**
17 **behest of Grace?**

18 MS. HARDING: Same
19 objection.

20 THE WITNESS: I don't really
21 recall.

22 BY MR. DANIEL COHN:

23 **Q. Directing your attention to**
24 **Section 2.1 of the TDP.**

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1 **read, what does the term "historical**
2 **values" mean?**

3 A. Again, Mr. Inselbuch
4 probably would have a more definitive
5 knowledge of this, but my understanding
6 is that it refers to the historical
7 claims data primarily in this particular
8 case from Grace with respect to
9 settlements and judgments in the tort
10 system as the starting point.

11 **Q. If that's the starting**
12 **point, what else is meant by historical**
13 **value?**

14 A. Well, again, this is boiler
15 plate language from TDPs. In some cases,
16 depending upon the facts of the case, the
17 claims history of comparable defendants
18 in the tort system is looked at.

19 The TDPs are generally
20 drafted in consultation with the
21 committees asbestos claims advisor which
22 is usually, if not invariably, Mark
23 Peterson, and depending on the amount of
24 claims data available to Mr. Peterson

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1 from the Debtor, the length of time that
2 the Debtor has been in bankruptcy and,
3 therefore, the possible staleness of the
4 pre-petition data and the judgment of
5 Mr. Peterson and the members of the
6 committee and the FCR, sometimes claims
7 data from other defendants is taken into
8 account.

9 **Q. And the purpose of that is**
10 **to most accurately discern the amount**
11 **that claimants would obtain if they were**
12 **permitted to resort to the tort system?**

13 MR. FINCH: Object to the
14 form.

15 THE WITNESS: The purpose
16 for that is to provide the values
17 that are used in the various
18 portions of the TDP where values
19 are assigned. They are used in
20 determining the expedited review
21 criteria, which is basically an
22 average value open settlement
23 offer to claimants that don't want
24 to get into a whole lot of

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1 different jurisdictions where the
2 history settlement values might be
3 higher or lower, whatever.

4 The expedited review, which
5 is where the numbers are used for
6 the most part, is a result of an
7 averaging process. And, as I say,
8 Mr. Inselbuch and Mark Peterson,
9 who are both going to be witnesses
10 in this case can tell you a lot
11 more about the detail about it
12 than I can.

13 BY MR. DANIEL COHN:

14 **Q. Is it the position of the**
15 **Asbestos PI Committee that a TDP would be**
16 **legally sufficient if it did not try to**
17 **treat claims as equivalently as possible**
18 **in accordance with their historical value**
19 **in the court system?**

20 MS. HARDING: Object to
21 form.

22 MR. FINCH: Object to form.

23 THE WITNESS: That's such a
24 hypothetical question. I have no

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1 back-and-forth about their claims.

2 It doesn't apply individual
3 review as such, although you also
4 have the so-called average and
5 maximum values, which are also
6 tied to the analysis of the
7 historical claims values, which
8 are intended to provide sort of
9 targets, if you will, for what, on
10 average, the individual review
11 process is supposed to come up
12 with.

13 The maximum values are
14 supposed to provide limits on what
15 the individual review process is
16 supposed to come up with. And all
17 of these are done in the context
18 of a Trust that is attempting to
19 pay similar claims in a similar
20 value, and they are all averages,
21 by definition. They are not
22 balkanized numbers reflecting the
23 results of different -- you don't
24 have different sets of numbers for

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1 idea what the committee's position
2 would be on that. And, moreover,
3 I have no idea what kind of a TDP
4 you are talking about.

5 It's the committee's
6 position that this TDP satisfies
7 the requirements of Section 524(g)
8 of the bankruptcy code and is a
9 reasonable means of doing so.

10 BY MR. DANIEL COHN:

11 **Q. Now, you have previously**
12 **testified earlier today that the Plan**
13 **envisions that asbestos PI claims will**
14 **not be allowed or disallowed pursuant to**
15 **Section 502 of the bankruptcy code; is**
16 **that correct?**

17 A. That is the general
18 contemplation of the Plan.

19 **Q. If an asbestos PI claim were**
20 **to be allowed or disallowed under Section**
21 **502, what would the standard for doing so**
22 **be?**

23 MR. FINCH: Objection,
24 hypothetical, calls for a legal

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1 conclusion, irrelevant to the Plan
2 at issue.

3 MS. HARDING: Same
4 objection.

5 THE WITNESS: Presumably, it
6 would be the result of the
7 bankruptcy court's determination
8 on the basis of a full contested
9 matter proceeding as to what the
10 state law validity and appropriate
11 amount would be.

12 I am not exactly sure how
13 the bankruptcy court would
14 determine the appropriate amount,
15 but I am pretty sure that they
16 wouldn't determine it by reference
17 to the historic values of claims
18 settled by Grace in the tort
19 system or the historic values of
20 Grace verdicts in the tort system.
21 They would determine it like any
22 court would determine it.

23 Moreover, it wouldn't be
24 done by the bankruptcy court. It

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1 **specific provision of the bankruptcy**
2 **code?**

3 MR. FINCH: Object to the
4 form.

5 MS. HARDING: Objection to
6 the form.

7 THE WITNESS: I am certainly
8 getting opportunities to do my
9 opinions about legal matters here
10 today. This is really refreshing.

11 Generally speaking, I guess
12 the answer to that is yes.

13 BY MR. DANIEL COHN:

14 **Q. May I direct your attention**
15 **to Section 5.3 of the TDP.**

16 A. I have it.

17 **Q. And specifically to Section**
18 **5.3(a)(3). Can you explain to me how the**
19 **schedule values listed there were**
20 **derived?**

21 MR. FINCH: Objection, asked
22 and answered; certainly answered.

23 MS. HARDING: And calls for
24 negotiations to the extent it

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1 would have to be done by the
2 district court, because under the
3 Section 157 of 28 U.S.C., the
4 bankruptcy court doesn't have
5 jurisdiction to determine the
6 amount and validity of personal
7 injury claims. And you would
8 probably have a right to a jury
9 trial under Section, I think it's,
10 1408.

11 And so you would wind up
12 with some jury being empanelled by
13 the District Court, I guess, of
14 Delaware, and that jury would tell
15 you whatever that jury thought
16 that claim was worth.

17 BY MR. DANIEL COHN:

18 **Q. And the standard under**
19 **Section 502 -- and this is a yes-or-no**
20 **question. The standard under Section 502**
21 **would be the claimant is entitled to**
22 **whatever he is entitled to under**
23 **applicable non-bankruptcy law except to**
24 **the extent that it is overridden by a**

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1 does, I am objecting.

2 MR. DANIEL COHN: Can we
3 stop for a second and go off the
4 record.

5 (There was a discussion held
6 off the record at this time.)

7 THE WITNESS: Let's go back
8 on the record. Mr. Inselbuch and
9 Mr. Peterson are better equipped
10 to answer the question that you
11 just asked because, while I
12 reviewed these TDPs and commented
13 on them and am generally familiar
14 with how they were created, et
15 cetera, the way in which our firm
16 and our committee operated was
17 that Mr. Inselbuch had a greater
18 role in working with the committee
19 and other lawyers in my firm on
20 the nitty-gritty of a lot of these
21 provisions.

22 And this particular
23 provision, they would be more
24 equipped to answer than I am. I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -
In Re: : Chapter 11
: :
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
: :
: (Jointly
Debtors : Administered)

- - -
Monday, May 4, 2009
- - -

Continuation of oral
deposition of PETER VAN N. LOCKWOOD,
ESQUIRE, taken pursuant to notice, was
held at the offices of CAPLIN & DRYSDALE,
One Thomas Circle N.W., Suite 1100,
Washington, DC 20005, commencing at
12:05 p.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -
MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

Page 450

1 APPEARANCES:
2
3 DRINKER BIDDLE & REATH, LLP
BY: MICHAEL F. BROWN, ESQUIRE
4 One Logan Square
18th & Cherry Streets
5 Philadelphia, Pennsylvania 19103-6996
215.988.2988
6 (brownmf@db.com)
(jeffrey.boerger@db.com)
7 Representing OneBeacon America Insurance
Company, Seaton Insurance Company,
8 Government Employees Insurance Company,
Columbia Insurance Company f/k/a Republic
9 Insurance Company
10
11 CAPLIN & DRYSDALE, CHARTERED
BY: NATHAN D. FINCH, ESQUIRE
12 JEFFREY A. LIESEMER, ESQUIRE*
(*VIA TELECONFERENCE)
13 One Thomas Circle N.W.
Suite 1100
14 Washington, DC 20005
202.862.7801
15 (ndf@capdale.com)
(jal@capdale.com)
16 Representing Grace, Official Committee of
Asbestos Personal Injury Claimants
17 ("ACC"), and Witness
18
19 ANDERSON KILL & OLICK, P.C.
BY: ROBERT M. HORKOVICH, ESQUIRE
1251 Avenue of the Americas
20 New York, New York 10020
21 212.278.1322
(rhorkovitz@andersonkill.com)
Representing the ACC
22
23
24

Page 452

1 APPEARANCES (continued)
2
3 COHN WHITESELL & GOLDBERG, LLP
BY: DANIEL C. COHN, ESQUIRE
4 101 Arch Street
Boston, Massachusetts 02110
5 617.951.2505
(cohn@cwgl1.com)
6 Representing the Libby Claimants
7
8 SPEIGHTS & RUNYAN
BY: DANIEL H. SPEIGHTS, ESQUIRE*
9 (*VIA TELECONFERENCE)
200 Jackson Avenue East
10 P.O. Box 685
Hampton, South Carolina 29924
11 803.943.4444
(dspeights@speightsrunyan.com)
12 Representing Anderson Memorial Hospital
13
14 TUCKER ARENSBERG
BY: MICHAEL A. SHINER, ESQUIRE*
15 (*VIA TELECONFERENCE)
1500 One PPG Place
16 Pittsburgh, Pennsylvania 15222
412.594.5586
17 (mshiner@tuckerlaw.com)
Representing Certain London Market
18 Insurers and AXA Belgium
19
20 FORD MARRIN ESPOSITO & WITMEYER & GLESER
BY: ELIZABETH M. DeCRISTOFARO, ESQUIRE
21 Wall Street Plaza
New York, New York 10005-1875
22 212.269.4900
Representing Continental Casualty Company
23 and Continental Insurance Company
24

Page 451

1 APPEARANCES (continued)
2
3 KIRKLAND & ELLIS, LLP
BY: THEODORE L. FREEDMAN, ESQUIRE
4 655 Fifteenth Street, N.W.
Washington, DC 20005-5793
5 202.879.5081
(tfreedman@kirkland.com)
6 Representing the Debtors
7
8 THE LAW OFFICES OF JANET S. BAER, P.C.
BY: JANET S. BAER, ESQUIRE
9 70 West Madison Street
Suite 2100
10 Chicago, Illinois 60602
312.641.2162
11 Representing the Debtors
12
13 SIMPSON THACHER & BARTLETT, LLP
BY: SAMUEL J. RUBIN, ESQUIRE*
14 (*VIA TELECONFERENCE)
425 Lexington Avenue
15 New York, New York 10017-3954
212.455.3122
16 (srubin@stblaw.com)
Representing Travelers Casualty and
17 Surety Company
18
19 VORYS, SATER, SEYMOUR AND PEASE, LLP
BY: TIFFANY STRELOW COBB, ESQUIRE*
20 (*VIA TELECONFERENCE)
52 East Gay Street
Columbus, Ohio 43215
21 614.464.8322
(tscoobb@vorys.com)
22 Representing The Scotts Company, LLC
23
24

Page 453

1 APPEARANCES (continued)
2
3 BILZIN SUMBERG BAENA PRICE & AXELROD, LLP
BY: MATTHEW I. KRAMER, ESQUIRE*
4 (*VIA TELECONFERENCE)
200 South Biscayne Boulevard
5 Suite 2500
Miami, Florida 33131-5340
6 305.450.7246
(mkramer@bilzin.com)
7 Representing Property Damage Committee
8
9 STROOCK & STROOCK & LAVAN, LLP
BY: ARLENE G. KRIEGER, ESQUIRE*
10 (*VIA TELECONFERENCE)
180 Maiden Lane
11 New York, New York 10038-4982
212.806.5400
12 (akrieger@stroock.com)
Representing Official Committee of
13 Unsecured Creditors
14
15 CROWELL & MORING, LLP
BY: MARK PLEVIN, ESQUIRE
16 NOAH S. BLOOMBERG, ESQUIRE
1001 Pennsylvania Avenue NW
17 Washington, DC 20004-2595
202.624.2913
18 (mplevin@crowell.com)
(nbloomberg@crowell.com)
19 Representing Fireman's Fund Insurance
(Surety Bond)
20
21
22
23
24

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1 testimony on behalf of the committee with
2 respect to any of the topics on which the
3 committee's designated you as a 30(b)(6)
4 witness?

5 A. Not that I recall.

6 Q. Did either Mr. Heberling or
7 his client, which is a member of the
8 committee, convey any position to the
9 committee concerning the treatment of
10 asbestos PI claims that's in any way
11 inconsistent with the testimony that you
12 have offered today?

13 MR. FINCH: Objection, form,
14 foundation. To the extent that
15 calls for privileged
16 communications, I instruct the
17 witness not to answer. To the
18 extent that calls for settlement
19 communications, I instruct the
20 witness not to answer.

21 If you can answer subject to
22 either of those instructions, you
23 can do so.

24 THE WITNESS: Mr. Cohn and

1 client taken positions inconsistent with
2 the other committee members with regard
3 to the Plan that's now on file?

4 A. Yes.

5 Q. And has that been the case
6 for the last year?

7 A. Probably, I would say so, at
8 least.

9 Q. Would you tell us what
10 positions the Libby claimants took in
11 meetings with the other ACC members with
12 regard to the insurance coverage that's
13 alleged to be issued to Grace?

14 MR. FINCH: Objection. To
15 the extent he is calling for
16 discussions between committee
17 members in the presence of
18 committee counsel that would
19 reveal privileged communications
20 or work product communications, I
21 instruct you not to answer the
22 question.

23 I think on its face, the
24 question invades the privilege,

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1 his clients have filed voluminous
2 papers in this case expressing
3 positions with which the majority
4 of the committee is in
5 disagreement, and the committee
6 has filed papers in opposition or
7 otherwise in response to those
8 papers.

9 You have asked me whether or
10 not anything I have said in the
11 course of a day and a half of
12 testimony is inconsistent with the
13 positions expressed by the Libby
14 claimants in those papers. I
15 would have to say it strikes me as
16 probable that I have said things
17 that were inconsistent with those
18 positions. But for me to go back
19 and recite from memory everything
20 that I might have said that might
21 be so inconsistent, I could not
22 begin to accomplish.

23 BY MR. SCHIAVONI:

24 Q. Have Mr. Heberling and his

1 but if you can answer the question
2 without so doing, you may do so,
3 although I tend to doubt it.

4 THE WITNESS: Read the
5 question back.

6 (The reporter read from the
7 record as requested.)

8 THE WITNESS: I have been
9 instructed not to answer that
10 question by my understanding my
11 instructions.

12 MR. SCHIAVONI: And, Nate, I
13 don't want to belabor the point,
14 but this would be the case with
15 regard to other questions about
16 what positions the Libby claimants
17 had communicated to the other
18 committee members in which they
19 are in opposition to the other
20 committee members, right?

21 THE WITNESS: Any
22 communication that happened that
23 wasn't as a result of them filing
24 something in court, I would take

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1 the same position and give the
2 same instruction.

3 If you ask about questions
4 that Libby claimants have taken in
5 papers filed in the court, for
6 example, in a Disclosure Statement
7 objections and the bullet point
8 Plan objections and the
9 committee's responses made to that
10 in open court, I will permit
11 Mr. Lockwood certainly to answer
12 those questions.

13 But anything that gets into
14 communications with between the
15 Libby claimants with the rest of
16 the ACC or counsel for the ACC
17 about their respective views of
18 insurance coverage, I am going to
19 take the position as privileged.

20 And so I think you have to
21 do it on a question-by-question
22 basis, but that's my general
23 position.

1 BY MR. SCHIAVONI:

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1 you have follow-up until we run
2 out of time.

3 (There was a discussion held
4 off the record at this time.)

5 (There was a break from 3:55
6 p.m. to 4:03 p.m.)

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. BROWN:

11 **Q. Mr. Lockwood, just a couple**
12 **of follow-ups. The court reporter is**
13 **actually going to read back a question**
14 **and answer. I think it's probably easier**
15 **to do that, and then I will ask my**
16 **follow-up question. It was end of**
17 **Mr. Wisler's questioning of you.**

18 A. Okay.

19 (The reporter read from the
20 record as requested.)

21 BY MR. BROWN:

22 **Q. And after that,**
23 **Mr. Lockwood, Mr. Wisler asked you a**
24 **follow-up as to what type of claim it**

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1 **Q. Okay. Mr. Lockwood, I just**
2 **have one other brief topic. And here is**
3 **the first question on that: Does the**
4 **Plan purport to release claims that may**
5 **exist between insurers and Non-Debtors?**

6 MR. FINCH: Objection, form,
7 broad, vague.

8 THE WITNESS: Phrased as
9 broadly as you have, I think the
10 answer is yes.

11 MR. SCHIAVONI: Okay. Thank
12 you. I have no further questions.

13 MR. FINCH: Is there anyone
14 else in the room who has
15 questions?

16 MR. BROWN: I have some
17 follow-ups.

18 MR. FINCH: Is there anyone
19 else on the telephone who has not
20 asked questions yet who has
21 questions?

22 (No response.)

23 MR. FINCH: Hearing no
24 affirmative response, I will let

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1 would be.

2 And is it correct that the
3 ACC does not have a position on what type
4 of claim it would be if it's not a Class
5 6 claim?

6 A. Well, the ACC doesn't, as
7 such, have positions on hypothetical
8 questions. So, yes, the ACC doesn't have
9 a position on that issue. The ACC --
10 well, I will leave it at that.

11 **Q. On Friday, Mr. Cohn asked**
12 **you a question, who drafted the TDP.**
13 **That was the question, and you gave an**
14 **answer which I am happy to show you the**
15 **full answer. But I WANT to repeat a**
16 **portion of your answer. You said: "The**
17 **participants that did it were basically**
18 **counsel for the ACC, counsel for the FCR,**
19 **and members of the ACC itself in terms of**
20 **reviewing and commenting on things, and**
21 **the FCR himself."**

22 When you said the ACC
23 itself, what did you mean?

24 A. I meant --

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1 **Q. I am sorry. When you said**
2 **members of the ACC itself, what members**
3 **are you talking about?**

4 A. Well, I was referring to the
5 personal injury counsel who were the
6 delegated representatives of the
7 individual ACC members, if that's what
8 you are driving at.

9 **Q. That's what I am driving at.**
10 **And who specifically were**
11 **they?**

12 A. As far as I know -- well,
13 the way in which the process works, in
14 general, is sometimes the ACC has
15 in-person meetings, sometimes it has
16 telephonic meetings, sometimes documents
17 get sent to it by email as PDF
18 attachments or whatever, and the ACC has
19 asked do you want to have a meeting or is
20 this good enough for you. So there is a
21 variety of ways in which the ACC views an
22 input as obtained.

23 And my answer was simply
24 that at the conclusion of a process, the

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1 members of the ACC had weighed in in one
2 or more of the ways in which I had
3 described some of them had; they all had
4 the opportunity to express their views;
5 and, therefore, the final product was the
6 product of their input. And there was a
7 final vote to go forward with the
8 document.

9 **Q. Okay. And when you say the**
10 **members, you are talking about their**
11 **actual personal injury counsel?**

12 A. As far as I know. But,
13 again, I couldn't tell you whether an
14 individual personal injury lawyer might
15 have consulted with his client, the
16 member, on one or more aspects of the TDP
17 or, for that matter, even sent the client
18 a copy of the entire TDP and had a
19 discussion with him about it. I
20 certainly couldn't exclude that.

21 **Q. Can you tell me the list of**
22 **counsel that you are talking about, the**
23 **actual names?**

24 A. They would be -- as a

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1 general proposition, I believe they are
2 in the Disclosure Statement. If they
3 are, it's a hell of a lot better
4 description of them than my memory. I
5 just --

6 MR. FINCH: There is also an
7 order entered by the U.S. Trustee
8 that identifies the 11 individual
9 members of the ACC and their
10 counsel, care of their firms.

11 BY MR. BROWN:

12 **Q. That's what I am driving at.**
13 **I would like to know who the individuals**
14 **were at their firms that were involved.**

15 A. Well, let me just see. I am
16 somewhat surprised. The Disclosure
17 Statement does not appear to contain the
18 members of the ACC. It just lists the
19 counsel representing the committee as a
20 whole. I had misremembered. I had
21 thought that it did.

22 I can't really remember. I
23 mean, I know the four -- I identified
24 four earlier as being involved in the

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1 discussions with Grace. They are
2 included. I think there is at least nine
3 members of the ACC. I do not recall, as
4 I sit here, who the other five members of
5 the ACC are. I mean, they are of
6 record -- strike that. I do not recall
7 who the other five lawyers for the
8 members of the ACC are. They are of
9 record.

10 **Q. But the four to which you**
11 **are referring is Mr. Budd, Mr. Rice,**
12 **Mr. Cooney, and Mr. Weitz?**

13 A. Correct.

14 **Q. You were talking about the**
15 **Trust Distribution Procedures and who**
16 **drafted them.**

17 **Would your answer be the**
18 **same with respect to the Trust Agreement?**

19 A. On the Trust Agreement, I
20 think there was more input from Grace,
21 and, indeed, I think there may have been
22 some from counsel from Sealed Air, as I
23 think about it. And, indeed, now that I
24 think about it, I think there may have

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1 even been a little input from the Sealed
2 Air counsel on the TDP. But, again, the
3 primary draftspersons were counsel for
4 the ACC and the FCR.

5 **Q. Okay. Can I direct your**
6 **attention to the Plan, which I guess is**
7 **ACC-5, and specifically it's page 70 on**
8 **my copy. It's under Section 7.7**
9 **Conditions to Occurrence of the**
10 **Confirmation Date, specifically condition**
11 **(j).**

12 A. I see it.

13 **Q. Can you just take a moment**
14 **to read that? I have one question on**
15 **that.**

16 A. I have read it.

17 **Q. In the portion of that**
18 **condition dealing with asbestos PD**
19 **claims, second-to-the last line, you will**
20 **see the words "if any" appear there, but**
21 **the same language doesn't appear for**
22 **asbestos PI claims.**

23 **Why?**

24 MR. FINCH: Objection,

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1 demands, or if there are, they
2 will be valid.

3 MR. BROWN: Okay. That's
4 all I have.

5 MR. FINCH: Could you go
6 back to the question I asked you
7 to find and read that question and
8 read the answer, and I will see if
9 I have got any redirect.

10 Does anybody else have any
11 questions?

12 (No response.)

13 MR. FINCH: Hearing none,
14 let me just hear that back.

15 (The reporter read from the
16 record as requested.)

17 MR. FINCH: No questions.
18 I think that is the end of
19 the deposition.

20 (The deposition concluded at
21 4:19 p.m.)
22
23
24

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1 foundation.

2 THE WITNESS: I need to talk
3 to my counsel about this one.

4 (There was a discussion held
5 off the record between the witness
6 and counsel at this time.)

7 MR. FINCH: The discussion
8 was with respect to whether I need
9 to instruct him not to answer the
10 question. He is allowed to answer
11 the question as long as doing so
12 doesn't reveal privileged
13 communication.

14 I think you can answer.

15 THE WITNESS: Barely.

16 The "if any" is in there, as
17 best I can recall, because the
18 Plan proponents -- in contrast of
19 PI, "if any" is under PD. Because
20 the Plan proponents are quite
21 confident that there is going to
22 be lots of future PI demands and
23 are less confident that there is
24 going to be lots of future PD

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1 CERTIFICATE
2
3

4 I HEREBY CERTIFY that the witness
5 was duly sworn by me and that the
6 deposition is a true record of the
7 testimony given by the witness.
8
9

10
11
12
13 _____
14 Lori A. Zabielski
15 Registered Professional Reporter
16 Dated: May 5, 2009
17
18
19
20

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